

Canadian
Transportation
Agency



Office
des transports
du Canada

ANNUAL REPORT

TWO THOUSAND AND THREE



100 YEARS **100 ANS**
AT THE HEART OF TRANSPORTATION
AU COEUR DES TRANSPORTS

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May 2004

The Honourable Tony Valeri, PC, MP
Minister of Transport
Transport Canada Building – Place de Ville
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Minister:

Pursuant to Section 42 of the *Canada Transportation Act*, I have the honour of presenting to you the Annual Report of the Agency for the year 2003, including the Agency's assessment of the operation of the Act and any difficulties observed in the administration of this Act.

The Air Travel Complaints Commissioner's reports, which cover the period of January to December 2003, are also part of the Agency's 2003 Annual Report. As a convenience to readers, certain parts of this report are specifically mentioned in this document.

Yours sincerely,

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

Marian L. Robson
Chairman

Acknowledgments

The Agency would like to thank the following organizations for the use of their photos: the Canada Science and Technology Museum; the Canada Aviation Museum; the Pacific Pilotage Authority Canada; the Canadian Pacific Railway Company; VIA Rail Canada Inc. and the Canadian National Railway Company.

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Montage image: A Canadian National Railway Company's conductor reassures a young passenger CSTM/CN002836; a man and woman holding travel documents ©Digital Vision; man with a service animal ©Photos.com; pilot boarding a vessel ©Pacific Pilotage Authority Canada.

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CHAIRMAN'S MESSAGE



Balance and fairness: those are the Canadian Transportation Agency's overriding concerns as the economic regulator and licensor of the federal transportation network.

The Agency must balance the interests of all participants in transportation, be they travellers with disabilities, municipalities, shippers with perishable products or carriers focused on cost reduction and efficiency.

There have been many organizational changes since the first federal regulatory body for transportation, the Board of Railway Commissioners, was created a century ago. But through all those changes — in areas of jurisdiction, mandate and government policy — there has been one constant: the quest for balance and fairness.

The Agency, with jurisdiction over air, rail and marine matters and responsibility for removing undue obstacles to the mobility of persons with disabilities, ensures fair and equitable treatment by administering laws, regulations, voluntary codes of practice, educational and outreach programs, and dispute resolution.

I am proud to report that the Agency made significant advances toward a more fair, efficient and accessible transportation system in 2003, in an environment that was changed profoundly by the terrorist attacks of September 11, 2001.

The war in Iraq and the outbreak of severe acute respiratory syndrome (SARS) brought new stresses to fragile aviation

industries worldwide, already beset by rising costs and decreased demand as a result of the “dot-com meltdown.” Security concerns posed additional challenges and not just for air travel. For instance, Canadian railways encountered scheduling delays and tougher screening at border crossings while, in the marine sector, port authorities are scrambling to meet the cost and requirements of stricter security measures.

The most notable event in Canadian transportation last year was the announcement on April 1, 2003, that Air Canada had been placed under creditor protection, pursuant to the *Companies’ Creditors Arrangement Act*. A Stay Order was issued by the Ontario Superior Court of Justice that suspended proceedings against the carrier and its subsidiaries. The Agency, therefore, was unable to deal with complaints or investigations regarding Air Canada for the rest of the year. However, there were other areas where the Agency moved ahead with great success.



The most notable event in Canadian transportation last year was the announcement on April 1, 2003, that Air Canada had been placed under creditor protection, pursuant to the *Companies’ Creditors Arrangement Act*.

The Agency issued new guidelines for Coasting Trade Licence Applications in August 2003, following extensive consultations with interested parties across the country. In developing these new guidelines, the Agency intended to clarify the role and responsibilities of parties involved in the application process, and to provide options for dealing with different types of applications. These guidelines clarify the Agency’s legislative mandate and administrative obligations. They also describe the information required by the Agency to make a determination, which is the pre-requisite for the Minister of National Revenue to issue or not a coasting trade licence for a foreign vessel.

The Agency published proposed amendments to the Railway Interswitching Regulations in Part I of the *Canada Gazette* in November 2003. These draft regulations include a reduction in interswitching rates, which reflects cost efficiencies accomplished by both Class 1 Canadian railways in recent years.

The Agency made significant rulings about the accessibility of transportation equipment in 2003, as part of its mandate to remove undue obstacles to the mobility of persons with disabilities. In response to a complaint from the Council of Canadians with Disabilities regarding the lack of accessibility aboard VIA Rail Canada Inc.'s new Renaissance passenger rail cars, the Agency determined that there were 25 different obstacles to the mobility of persons with disabilities among the design features of the VIA trains, 14 of which are undue and must be removed. VIA later sought leave to appeal that decision to the Federal Court of Appeal.

Concerning another complaint from the Council of Canadians with Disabilities regarding the replacement of larger aircraft with smaller commuter aircraft on domestic routes in Canada, the Agency found that there was indeed a reduction in accessibility on the smaller aircraft that created an obstacle to persons with disabilities. However, the Agency determined that air carriers must be permitted to make general, internal commercial decisions such as those regarding the makeup of their fleet, provided that an appropriate level of accessibility is afforded by the alternative equipment. The Agency decided that each carrier's services

must be examined on a case-by-case basis in order to allow the Agency to assess the overall accessibility of the service provided by the carrier.

The Agency approved a number of "fifth-freedom" charter flights and granted extra-bilateral authorities for the delivery of fresh seafood from Atlantic Canada to Europe. When considering applications from foreign air services, the Agency consults Canadian air carriers about their concerns. In the case of the seafood charters, the Agency balanced the commercial interests of the Atlantic fishing industry and its desire to expand markets by delivering fresh seafood promptly, against the interests of the Canadian aviation industry in the area.

On October 2, 2003, Liette Lacroix Kenniff was appointed to a second term as Canada's Air Travel Complaints Commissioner. Two Members left the Agency in June 30, 2003, when their terms expired. I want to thank Richard Cashin and Keith Penner for their many contributions; both were experienced Members of this Agency and its predecessor, the National Transportation Agency.

Unresolved issues and complaints between parties within the federal transportation network can be brought to the Agency for a fair hearing. The Agency has offered mediation as an alternative to its formal complaints-resolution process since 2000, and the program has grown over the years. Beginning in 2003, it was offered as the first choice for dispute resolution in the rail, marine and accessible transportation areas.

I'm very pleased with the acceptance of our mediation program by the transportation industry and others. I'm happy to report that 16 mediations were completed successfully in 2003, producing party-drafted agreements and collaborative outcomes while avoiding for both parties the costs and time requirements of the formal adjudication process.

In addition, mediation dealt with a wider range of disability issues and commercial disputes between carriers and shippers in 2003, another indication of the

program's success. As acceptance grows, so does the range of issues that are referred to mediation. The Agency will continue to promote mediation as an effective means of resolving disputes.



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The Office of the Air Travel Complaints Commissioner and her staff also employ informal dispute resolution alternatives to resolve complaints. The Air Travel Complaints Program has been a great success for the travelling public. The Commissioner has received approximately 7,000 complaints since July of 2000. About 70 per cent of the complaints that were resolved produced more favourable results for the complainant.

In 2003, the Agency issued a total of 3,164 rulings, made up of 726 decisions, 641 orders, 1,461 permits/licences, 56 final letter decisions and 280 interim decisions. Of those, 2,629 related to air transportation, 335 related to rail, 106 related to marine and 94 related to accessible transportation.

The Agency focused on its own management practices in 2003 to improve the effectiveness of Agency programs. At the annual senior management planning session last autumn, we decided to hire a consulting firm to review our management effectiveness. The consulting firm conducted interviews and organized focus groups; among the preliminary findings were that the Agency is seen by staff as a good place to work and there is a strong culture of organizational harmony and cohesiveness. On the other hand, it was also noted that there is some misaligned resource distribution in the face of heavy workload demands in certain areas and that some processes are in need of streamlining. A full report will be submitted in 2004.

The Agency made progress in implementing modern comptrollership practices in 2003, which involves a management excellence action plan to allocate resources for optimal use, a performance measurement framework and a strategy for better reporting within the Agency and to Parliament and the Canadian public. Efforts were also spent on creating a risk-management environment which seeks to contribute to the development, strengthening and implementation of better decision-making processes.

Next year promises to be an exciting and busy time for the Agency. February 1, 2004, is the centennial of federal transportation regulation in Canada. An Agency committee began working on plans in 2003 to mark the occasion.

When Air Canada comes out of creditor protection, we will re-activate work on cases suspended by the Stay Order. We also expect the Federal Court of Appeal to deal with two cases stemming from previous Agency decisions, i.e. the VIA appeal regarding its new Renaissance cars and the appeal by Linda McKay-Panos regarding the Agency ruling in 2002 that her obesity was not a disability for the purposes of the *Canada Transportation Act*.

As the Agency steps into a second century of federal transportation regulation, it will continue to serve Canadians, whether providers or users of transport, in a fair and timely manner, balancing their interests within the parameters of Government of Canada policy and the Agency's mandate.



Marian L. Robson
Chairman and Chief Executive Officer

CHAPTER 1

ACCESSIBLE TRANSPORTATION



THE NATIONAL TRANSPORTATION ACT, 1987, established the National Transportation Agency with authority to investigate complaints regarding undue obstacles to public mobility, particularly for persons with disabilities. In July 1988, the Agency was empowered to develop and administer accessibility standards for persons with disabilities within the federal transportation network. In 1992, the Act was amended to include the words “accessible” and “persons with disabilities” making the needs of travellers with disabilities an integral part of the Agency’s jurisdiction. Subsequently, Air Transportation Regulations and Regulations for Personnel Training for the Assistance of Persons with Disabilities were established to provide services and information to travellers with disabilities and to train staff who deliver on these. Since 1996, through codes of practice and education programs, the Agency encourages industry compliance in removing undue obstacles to the mobility of persons with disabilities.

Under Part V of the Canada Transportation Act, the Agency has the mandate to eliminate undue obstacles to the mobility of persons with disabilities in the federal transportation network, which includes air, rail and ferry operations, as well as inter-provincial bus transportation. The Agency seeks to remove undue obstacles by promulgating regulations, developing codes of practice, communicating with the transportation industry and community of persons with disabilities, resolving individual accessibility-related complaints and by ordering corrective measures, if required.



In 2003, the Canadian Transportation Agency continued to work within its mandate to eliminate undue obstacles in the federal transportation network for persons with disabilities.

The accessibility of transportation equipment was the central issue in three Agency decisions during the year. In one complaint, regarding VIA Rail Canada Inc.'s new fleet of Renaissance cars, the Agency found 25 obstacles to the mobility of persons with disabilities, including persons who use wheelchairs; 14 of these obstacles were found to be undue and the Agency ordered that they be removed.



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In two other complaints, regarding the replacement of Dash 8 aircraft with smaller commuter aircraft on domestic routes in Canada, the Agency determined that there was a reduction in accessibility features that created an obstacle to persons with disabilities, but decided that the obstacle was not undue.

Also in 2003, the Agency completed work on a new code of practice, called Removing Communication Barriers for Travellers with Disabilities. The Communication Code is expected to be released in 2004.

In a letter signed by Agency Chairman Marian Robson and sent to all travel agencies and airlines across the country, the Agency underscored the importance of effective

communication between tour operators and travel agents and their clients who have disabilities in order to ensure that the appropriate services are provided by carriers.

The Agency also introduced an award in early 2003 to recognize best practices in accessible transportation. Then, in October 2003, the Agency itself received recognition, in an international tourism report, for its accessible transportation program.

Resolving Accessibility Disputes and Addressing Accessibility Concerns

The investigation and resolution of an accessibility issue can have an impact well beyond the settling of a particular complaint. The resolution of an accessibility issue can change a carrier's policies and procedures in ways that benefit future travellers, and also sends a message to industry as to what the Agency sees as an undue obstacle, which can lead to changes by other companies as well. There are three ways in which the Agency works to resolve accessibility disputes and address accessibility concerns: by facilitation, mediation and complaint adjudication.

Facilitation

A traveller with a disability may experience problems while making reservations, or may simply have concerns about future travel related to his or her disability. With increasing frequency, Agency staff worked in 2003 to raise travellers' concerns with carriers and suggest ways to address these concerns prior to travel. By taking this early action, the Agency facilitated the resolution of transportation problems, and avoided or alleviated situations that might otherwise have resulted in obstacles to the mobility of persons with disabilities. In some situations, persons with disabilities withdrew their complaints because, through the efforts of Agency staff, their concerns had been addressed and remedied by the carrier to their satisfaction.

Mediation

Mediation is another option for settling disputes in accessible transportation. This is the second year that the program was offered to deal with accessibility issues. Fourteen complaints were assessed as suitable for mediation in 2003.

The complaints dealt with such issues as the needs of persons with mobility disabilities in air and rail travel, including the availability of prearranged wheelchairs and seating, wheelchair damage, levels of assistance, fares for

attendants and rail car accessibility. Other issues included the transportation, loss and retrieval of an essential medical device, and the acceptance and accommodation of guide dogs.

Of the 14 cases in 2003, one was resolved during pre-mediation discussions and six resulted in mediation sessions. Five of those mediations were successful, with the result that formal complaints were withdrawn and the files were closed. Most mediations were settled in six to eight weeks. In the seven remaining cases, one application was withdrawn, one case is pending and five cases did not proceed because one of the parties declined to participate in the voluntary program. These five cases are being dealt with through the Agency's formal adjudication process.

Interest in mediation as a method of solving disputes continued to grow among users and providers of transportation services in 2003. The Agency found that a number of service providers demonstrated a positive, cooperative and collaborative approach toward the program.

An Agency report given to the Accessibility Advisory Committee on the progress of the mediation program was greeted with genuine interest and satisfaction. Committee

members generally agreed that mediation helped to serve the needs of persons with disabilities.

One Committee member said: "The human dialogue within mediation is important ... that is something that the community of persons with disabilities has been [seeking] for years. We want to be part of the process. And I really applaud the mediation process [for] allowing that to happen".

The Agency will continue to promote mediation as an effective and efficient way to settle disputes in 2004.

Complaint Adjudication

The *Canada Transportation Act* provides persons who perceive undue obstacles to the mobility of persons with disabilities within the federal transportation network the opportunity to file a complaint with the Agency.

In considering a complaint under subsection 172(1) of the Act, the Agency uses a three-step process by which it determines:

- Whether the person has a disability for the purposes of the Act;

- Whether there was an obstacle to the mobility of persons with disabilities; and
- Whether the obstacle was undue.

The Agency will then make a finding of whether or not there is an undue obstacle to the mobility of persons with disabilities.

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

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

On October 29, 2003, the Agency ordered VIA Rail to remove 14 undue obstacles to the mobility of persons with disabilities from some of the cars in its new fleet of Renaissance passenger cars purchased in 2000.

What Is an Undue Obstacle?

The terms “obstacle” and “undue” have not been defined in the *Canada Transportation Act* in order to allow the Agency to exercise its discretion in its interpretation of the legislation to determine the existence of undue obstacles on a case-by-case basis.

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

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

The Agency's order stemmed from a complaint that had been filed by the Council of Canadians with Disabilities (CCD) on December 4, 2000, raising 46 different concerns about the Renaissance cars, primarily relating to the accessibility by persons who use wheelchairs.

VIA had purchased 139 Renaissance passenger rail cars from France's Alstom Transport Ltd., in December 2000, which would increase the size of the VIA fleet by about one-third. The Agency's investigation focused on particular areas of the Renaissance cars, some of which were specifically designed to accommodate the needs of persons with disabilities, including those who use wheelchairs. These areas included "the accessible suite", a term used by VIA to describe the sleeper unit and adjoining washroom unit in the Renaissance service cars; and features in the VIA-1 coach cars, the economy coach cars, which have a wheelchair tie-down area to accommodate an occupied personal wheelchair and a service animal (e.g. guide dog), the service car and the sleeper car.

The Agency issued a decision on March 27, 2003, following challenges by VIA to the Agency's jurisdiction to consider the matter, including two unsuccessful applications by VIA

to the Federal Court of Canada for leave to appeal; the filing of extensive submissions, including legal arguments, by both VIA and CCD; a one-day oral hearing in Toronto; three physical inspections of the Renaissance cars; and extensive analyses of the alleged obstacles, each requiring a substantive determination under Section 172 of the *Canada Transportation Act*.

In the March decision, the Agency set out some of the long-standing principles of accessibility that it and its predecessors have recognized:

- Persons with disabilities have the same rights as others to full participation in all aspects of society. Equal access to transportation is critical to the ability of persons with disabilities to exercise that right. Insofar as transportation service providers are aware of the needs of persons with disabilities and are prepared to accommodate those needs, it can be said that persons with disabilities may have equivalent access to the network.

- Implicit in the term “equivalent access” is the notion that transportation service providers may have to provide different access — more or different services, different facilities or features, all designed to meet the needs of persons with disabilities to ensure that they, too, can access the network. Equivalent access to the transportation network involves the ability of persons with disabilities to have as much independence as possible. To safeguard independence for persons with disabilities, it is necessary to recognize the importance of a person’s own mobility aid to his or her independence, dignity, safety and comfort.
- Where there are features and amenities specifically designed to meet the needs of persons with disabilities who wish to remain in their own wheelchairs, it is essential that these features provide adequate dimensions and appropriate design so as to not lessen the level of independence of persons with disabilities.
- Where there are features specifically designed to meet the needs of persons with disabilities who wish to remain in their own wheelchairs, it is essential that persons with disabilities have safe and easy access to those features.
- Another important concept is reasonable accommodation which, in the context of the Agency’s mandate, refers to the responsibility of the transportation service provider to meet the needs of persons with disabilities “as far as is practicable”. Where a service provider can justify providing something less than equivalent access, then it can be said that it has provided a reasonable accommodation and the Agency would not find an undue obstacle in the accommodation. However, if the Agency finds that the accommodation provided is not reasonable or falls short of what is practicable in the circumstances, then the Agency may find an undue obstacle and may require corrective measures to eliminate that undue obstacle.

In the March 27 decision, the Agency found that 25 of the 46 concerns raised by CCD in its complaint were obstacles to the mobility of persons with disabilities. Of those 25 obstacles, eight were not undue, 14 were found to be preliminarily undue, while three obstacles were deferred pending the Agency's consideration of the level of accessibility and accommodation provided in the "accessible suite". Ten of the 46 concerns were found to be safety issues, which the Agency referred to Transport Canada. Eleven were found to not constitute obstacles.

Before making a final decision on the preliminary finding of 14 undue obstacles, the Agency gave VIA two opportunities to "show cause" why the 14 obstacles were not undue; and why it could not implement one of the options VIA submitted to Transport Canada to address a safety matter, which would provide for a wheelchair-accessible washroom across from a wheelchair tie-down. VIA then filed responses to the Agency's show cause directions.

On October 29, 2003, the Agency reached a final decision on the preliminary undue obstacle findings, as well as the undueness findings that were deferred in the March



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decision. In the final decision, the Agency directed VIA to make the following modifications to the Renaissance cars:

1. In the "accessible suite", to ensure that:
 - a) the door from the vestibule in the service car into the sleeper unit in the "accessible suite" is widened to at least 81 centimetres (31.89 inches); and
 - b) there is a wheelchair tie-down in the sleeper unit to permit a person with a disability to retain a personal wheelchair.

2. In the economy coach cars, to ensure that:
 - a) there is a washroom that can accommodate persons using personal wheelchairs close to the wheelchair tie-down;
 - b) there is sufficient clear floor space in the wheelchair tie-down area to accommodate a person in a personal wheelchair and a service animal; and the tie-down area, in conjunction with the area that is adjacent to it, provides adequate manoeuvring and turning space to permit a person using a personal wheelchair to manoeuvre into and out of the tie-down area;
 - c) there is a seat for an attendant, which faces the wheelchair tie-down; and
 - d) the width of the bulkhead door opening located behind the wheelchair tie-down and the width of the aisle between the future “valet/storage” areas are at least 81 centimetres (31.89 inches) in width.
3. In every economy coach car, to ensure that there is one row of double seats that is lowered to floor level and that provides sufficient space for persons who travel with service animals.

4. In every coach car, to ensure that, in addition to the four movable aisle armrests in the cars at present, there are at least two additional movable aisle armrests on the double-seat side.
5. With respect to the exterior stairs on those Renaissance cars that lack closed stair risers, to ensure that the open risers on those stairs are closed.
6. With respect to overnight trains where a sleeper car service is offered, to ensure that a service car is connected in such a way that the “accessible suite” is adjacent to the wheelchair tie-down end of the economy coach car that contains the wheelchair-accessible washroom, and this suite is offered as a sleeping accommodation.

The Agency also ruled that the lack of a 150-centimetre (59.06 inches) turning diameter within the “accessible suite”; the lack of a sleeper unit, including a washroom, in the sleeper car that is accessible to persons using personal wheelchairs; and the height and depth of stair risers did not constitute undue obstacles to the mobility of persons with disabilities, including persons using personal wheelchairs.

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

VIA sought leave to appeal the March and October decisions with the Federal Court of Appeal. The Federal Court of Canada granted VIA's application for a stay of the Agency decisions on December 17, 2003.

Small Aircraft Accessibility

On March 14, 2003, the Agency issued decisions in response to two accessibility complaints that involved the replacement of larger aircraft with smaller aircraft on domestic routes in Canada.

One application, filed in April 2001 by a traveller with a disability, was in regard to the replacement of Dash 8 aircraft with smaller Beech 1900D aircraft on the St. John's-Gander route in Newfoundland and the inaccessibility of the Beech 1900D aircraft to her; and

misinformation that had been provided to the traveller by the Air Canada Meda desk, which is the medical section of Air Canada. (The Meda desk provides clearance for air travel after reviewing a person's information, which is typically submitted by the person's physician.)

The traveller had called the Air Canada Meda desk before planning her journey to explain her disability, and to ascertain that her needs, including appropriate boarding equipment for her personal wheelchair and an adjacent seat for a special-care attendant, could be met on a flight between St. John's and Gander. An Air Canada Meda desk representative assured the traveller, in writing, that her needs could be accommodated. However, when the traveller tried to purchase tickets at the St. John's airport, she was informed that her boarding assistance and seating needs could not, in fact, be met.

The Council of Canadians with Disabilities (CCD) filed a complaint on August 14, 2001, concerning the replacement of Dash 8 aircraft, by Air Nova and by Air Labrador, with smaller aircraft on routes throughout Canada and, specifically, the replacement of the Dash 8 aircraft with the Beech 1900D aircraft on the St. John's-Gander route.

The Agency investigation found that prior to February 2, 2001, Air Nova, one of Air Canada's regional operators, had operated 37-seat Dash 8 aircraft on the St. John's-Gander route. However, on February 2, Air Nova entered into a code-sharing agreement with Air Labrador. Air Labrador took over operation of the route and subsequently replaced the Dash 8 aircraft with 18-seat Beech 1900D aircraft on the St. John's-Gander route. The Beech 1900D, considered a commuter aircraft, has two single rows of seats on either side of a narrow, 30.48-cm (12-inch) aisle, and is operated without a flight attendant.

The Agency decided on March 14, 2003, that regarding the general issue of the replacement of larger aircraft with smaller aircraft on routes throughout Canada, the deterioration in the level of accessibility provided by the equipment was clearly an obstacle to some persons with mobility disabilities. However, the Agency decided that air carriers must be permitted to make internal, commercial decisions such as those regarding the composition of their aircraft fleets as long as they provide an appropriate level of accessibility with whatever alternative equipment is used.

The Agency, therefore, did not find the replacement of larger aircraft with smaller aircraft on routes throughout

Canada to be an undue obstacle to the mobility of persons with disabilities. Rather, the Agency decided that the services provided by each carrier must be examined on a case-by-case basis to enable the Agency to assess the overall accessibility of the service provided by the air carrier.

Further, the Agency found that the specific example of the replacement of the larger Dash 8 aircraft with Beech 1900D aircraft on the St. John's-Gander route clearly presented an obstacle to certain persons with disabilities. However, again, the obstacle was not found to be undue in view of the optimization of the accessibility of the Beech 1900D aircraft by Air Labrador. The Agency found that Air Labrador was acting in good faith in its attempts to fulfil its responsibility to maintain, as far as is practicable, the level of accessibility in smaller aircraft on its commuter routes and to actively invest in improved technology.

The Agency further decided that in the particular case of the traveller with the disability, that while the inaccessibility of the Beech 1900D aircraft to that traveller constituted an obstacle to her mobility, the obstacle was not undue as she was unfortunately one of the few persons with disabilities who will never be able to be accommodated on this aircraft for a number of reasons including the seating

configuration, the incompatibility of her lift with this aircraft and her inability to use a boarding chair.

However, the Agency found that the information provided to the traveller with a disability by the Air Canada Meda desk constituted an undue obstacle to her mobility in that it impaired her ability to make an informed decision about her travel plans. The agent should not have led her to believe that there would be no problem in accommodating her needs.

The Agency directed Air Labrador to issue an advisory bulletin to booking agents at the St. John's airport, the Gander airport and the Meda desk that highlighted the importance of providing accurate information to persons with disabilities about the carrier's equipment and its ability to accommodate their disabilities. Air Labrador was further directed to instruct personnel to collect all necessary information from customers with disabilities before responding to their requests for information.

Obesity Complaints

In 2003, the Agency had three complaints outstanding from persons who are obese, but was awaiting the results

of the Federal Court of Canada decision on the Linda McKay-Panos appeal before proceeding.

Ms. McKay-Panos had previously filed a complaint with the Agency against Air Canada, concerning the seating accommodation provided to her and the carrier's policy of charging passengers for additional seating required because of their obesity.

Before deciding on this case, the Agency first addressed the jurisdictional question of whether obesity is a disability for the purposes of Part V of the Act. The Agency concluded that obesity, in and of itself, is not a disability, but there may be individuals who are obese who have a disability for the purposes of Part V of the Act because of their obesity. The Agency therefore decided to consider obesity complaints on a case-by-case basis.

On October 23, 2002, the Agency dismissed Ms. McKay-Panos's application against Air Canada. The majority decision found that although Ms. McKay-Panos might have health problems, impairments, limitations or restrictions caused by obesity, she does not have a disability for the purposes of the accessibility provisions of Part V of the Act.



A Self-reliant Passenger

A person who is deaf and blind booked a CanJet flight from Toronto to Halifax through a travel agent. At the time of booking, the person told the travel agent that she is both deaf and blind, but that she has travelled by air unaccompanied before and that she is self-reliant. The travel agent relayed the information to CanJet, but on the day of the flight personnel at the CanJet check-in counter in Toronto told the customer she could not travel unattended. A CanJet supervisor explained that, in case of emergency, personnel would be unable to communicate with her. The traveller was told she would have to be escorted on the flight, or she could take a later flight if she could find a fellow passenger to act as her escort. A fellow passenger agreed to act as the traveller's escort on a flight later that day. On the return trip, the applicant's brother accompanied her.

In response to a complaint from the traveller, the Agency found that CanJet's policy and procedures constituted an undue obstacle to the mobility of persons who are visually and hearing impaired, and who are self-reliant. Further, the Agency found that the failure by CanJet's personnel to communicate the carrier's policy at the time of the reservation and in advance of travel, and the lack of sensitivity of CanJet's personnel, constituted undue obstacles to the traveller's mobility. Among other things, CanJet was required to amend its policy and procedures to allow a passenger who has disabilities, but who is self-reliant, to travel unattended.



One of the three Members on the panel dissented and concluded that the applicant has a disability for the purposes of the Act.

On November 22, 2002, Ms. McKay-Panos filed a motion with the Federal Court of Appeal seeking leave to appeal the Agency's 2002 decision. Leave to appeal was granted on January 14, 2003. However, the appeal was stayed according to the Stay Order issued by the Ontario Superior Court of Justice, on April 1, 2003, when Air Canada was granted protection from creditors under the *Companies' Creditors Arrangement Act*. The Stay Order was later extended to March 31, 2004.

Persons With Allergies

In 2003, there were 12 applications before the Agency from persons who have allergies, 11 of those held over from previous years.

In 2002, the Agency had addressed a preliminary jurisdictional issue raised by Air Canada as to whether an allergy should be considered a disability for the purposes of Part V of the Act. The Agency concluded that an allergy, per se, is not a disability for the purposes of Part V of the

Act. However, the Agency 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.

Therefore, the Agency decided on May 10, 2002 that it would examine, on a case-by-case basis, whether a person who has an allergy is a person with a disability for the purposes of the accessibility provisions of the Act. The Agency's conclusions regarding the allergy issue were consistent with those set out in the Agency decision on December 12, 2001, regarding the jurisdictional question of whether obesity is a disability for the purposes of Part V of the Act.

In light of the fact that the issues raised in the allergy-related applications are similar in nature to those raised in the appeal by Ms. McKay-Panos, the Agency adjourned the 11 cases outstanding in February 2003, pending the completion of Ms. McKay-Panos's appeal. A twelfth allergy complaint against Air Canada was filed later in 2003.

Persons Who Require Medical Oxygen

There were approximately 20 complaints before the Agency in 2003, regarding Air Canada's policy and

procedures for the use of medical oxygen. However, as a result of the Stay Order regarding Air Canada, the Agency was unable to process these applications.

Extra Seat Charges

There were six complaints before the Agency in 2003, continued from the previous year, regarding the cost to persons with disabilities of additional seating for either themselves or for their personal-care attendants. Five complaints related to the domestic air industry while one complaint, against a foreign air carrier, involved the international air industry.

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

The fifth complaint was filed by the Council of Canadians with Disabilities (CCD), on behalf of itself and two individuals, against Air Canada, Tango, Jazz and WestJet, regarding fares charged for additional seating space; also

against Canada Customs and Revenue Agency, regarding the levying of the Air Traveller's Security Charge; and against the Gander International Airport Authority and the Air Transport Association of Canada, for the levying of the airport improvement fee at the Gander airport.

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

The Agency decided to deal with the five domestic complaints concurrently, in light of the similar issues raised. The Agency also decided to adjourn the case involving the foreign air carrier until it had completed its investigation and issued decisions on the five complaints in the domestic air industry. Subsequently, the Agency adjourned the applications against Air Canada and the part of CCD's application involving Air Canada because of the court order under the *Companies' Creditors Arrangement Act*, staying all proceedings against Air Canada and certain of its subsidiaries.

In addition, as a result of a Notice of Motion filed by WestJet, the Agency determined that its investigation in the CCD application would be aided by undertaking concurrent reviews of WestJet and Air Canada in view of their different markets, services and financial positions. The Agency therefore adjourned the CCD application in its entirety, until the Stay Order regarding Air Canada is lifted.

Windsor International Airport

Two warnings were issued by the Agency's Enforcement Division to Windsor International Airport for contraventions of the Personnel Training for the Assistance of Persons with Disabilities Regulations. The contraventions were:

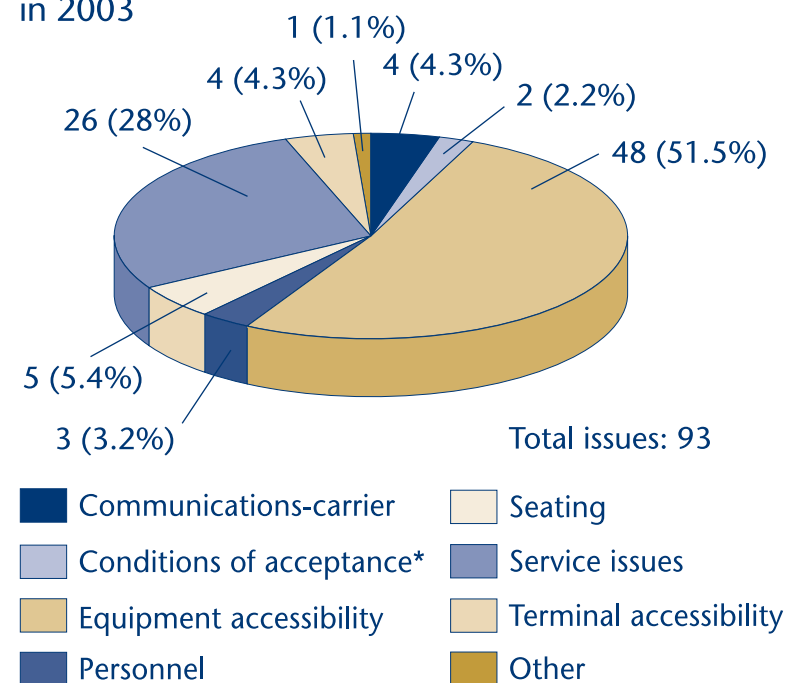
1) failure to keep available for inspection by the Agency and the general public a copy of its training program prepared in the form set out in the schedule and containing the information required; and 2) failure to ensure that all employees and contractors received initial training, as required by the Regulations, within 60 days of the commencement of their duties.

Complaint Statistics

During 2003, 52 accessibility-related complaints were received by the Agency. Thirty-one decisions were issued, of which 24 resolved new complaints and seven

Accessibility Complaint Stats

Accessibility complaint issues raised in the 24 new complaints addressed by the Agency in 2003



*Conditions of acceptance cover such matters as reservation policies and acceptance of mobility aids. The total number of complaint issues is greater than the number of complaints (24) because a complaint may raise more than one issue, e.g. a complaint might include issues about seating, service and personnel difficulties.

determined whether corrective measures ordered by the Agency in previous decisions had been implemented. In addition, the Agency issued 63 procedural and other interlocutory decisions in letter format regarding matters still under consideration by the Agency. Ten complaints were withdrawn, five as a result of mediation. The Agency also facilitated the resolution of six complaints prior to travel and one case was transferred to the Air Travel Complaints Commissioner because it did not raise accessibility issues.

Regulatory Work

Two sets of regulations are at the Agency's disposal in its work to eliminate undue obstacles to the mobility of persons with disabilities. They are Part VII of the Air Transportation Regulations — Terms and Conditions of Carriage of Persons with Disabilities, promulgated on January 1, 1994; and the Personnel Training for the Assistance of Persons with Disabilities Regulations, promulgated on January 26, 1995.

In 2003, the Agency continued to consider whether Part VII of the Air Transportation Regulations should be amended to apply to aircraft with fewer than 30 passenger seats. The Agency also continued its work developing guidelines for

accommodating passengers with disabilities on those aircraft not covered by the Regulations. In 2004, the Agency will analyse whether the results of a report on Boarding Small Regional Aircraft (discussed below) may have an impact on the Regulations.

The Agency consults on a regular basis with its Accessibility Advisory Committee, which has representatives from the community of persons with disabilities, the transportation industry and other interested parties. The Agency consults the Committee on all of its regulatory projects, seeking opinions and advice on issues of importance to the community of persons with disabilities.

Boarding Small Aircraft

A report, called Boarding Small Regional Aircraft, was released in 2003 as part of a joint research project with the Transportation Development Centre of Transport Canada. The research project has focused on boarding devices used by Canadian airport authorities and air carriers.

The report examined the accessibility of passenger aircraft with 19 to 60 passenger seats that are used in air travel in Canada, in relation to the types of and availability of boarding devices at Canadian airports, their use, costs and

operational characteristics. The study also looked at the compatibility of airport devices with small aircraft, as well as their performance and effectiveness for passengers using wheelchairs. In 2004, the Agency will analyse the results of the report and consult with the members of its Accessibility Advisory Committee on the issue.

Codes of Practice

The Agency has developed three codes of practice to make the federal transportation network more accessible for 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); and
- Ferry Accessibility for Persons with Disabilities (Ferry Code).

The codes of practice are in keeping with the Government of Canada's policy to pursue voluntary approaches as an alternative to implementing regulations in the Agency's efforts to eliminate undue obstacles in the federal transportation network.

Compliance with the Agency's codes translates into greater access to the federal transportation system for persons with disabilities, as well as increased assurance that these passengers have access to predictable and uniform levels of service as they travel in Canada.

The codes, which were developed in consultation with associations of and for persons with disabilities, senior citizens, manufacturers, carriers and service providers, are available on the Agency's Web site at www.cta-otc.gc.ca/access/codes.

Monitoring the Codes of Practice

The Agency conducts regular surveys on industry compliance with these codes of practice. Since all of the provisions of the three codes came fully into effect on January 1, 2002, the Agency's activities in this area were especially comprehensive during 2002 and 2003.

In 2001 and 2002, industry-monitoring surveys were sent to all air and rail carriers as well as ferry operators covered by the codes to assess carriers' progress in implementing the codes' provisions. The surveys included questions about important features, such as accessible washrooms: and on-board wheelchairs. As well, data collected on the

accessibility features present when each code was released (benchmark data) were compared with data collected on the features present on the date the codes entered into effect (implementation data). The Agency received a response rate of 100 per cent for all three surveys.

The results of the 2001 Rail Code monitoring survey disclosed that more than two-thirds of the accessibility criteria for rail cars had a level of medium, high or full compliance.

In the 2002 Air Code survey, carriers reported that more than one-third of the accessibility criteria had full compliance and 40 per cent had high compliance.

The 2002 monitoring survey for the Ferry Code showed that more than half of the accessibility criteria for ferries had full compliance and more than one-quarter had high compliance.

The results of these latest industry surveys, which were completed in 2003, show that although various accessible features were already in place at the time of the release of the codes, air and rail carriers, and ferry operators, continue to fully comply with many of the codes' provisions as well

as to make further improvements. For example, the Rail Code monitoring survey identified that washrooms accessible to persons with disabilities (Rail Code) has increased from 3 to 36 per cent. The Ferry Code monitoring survey showed significant improvements in the use of colour contrasting on stairs and hallways, and an increase from 40 per cent to full compliance with the criteria regarding handrails on both sides of stairways.

By reporting on the results of these surveys and showing the compliance rates of carriers, the Agency provides reliable information to the public and it also makes the transportation industry publicly accountable for the level of accessibility of its services.

In 2003, the Agency presented the survey results to its Accessibility Advisory Committee. Copies of the reports for the Rail, Ferry and Air codes were also distributed to the members of the Advisory Committee and all carriers that participated in the surveys. Copies of the reports are available from the Agency (the reports are not available on the Web site).

In 2003, the Agency's field investigators continued to verify information submitted by carriers in the monitoring surveys

of the three codes of practice. Carriers report in writing on their measures to meet the code requirements. This self-reporting is then verified through actual on-site comparison of the paper reports by Agency investigators. These visits also offer an opportunity to provide carriers with information and guidance to help them implement accessibility improvements more quickly. Personal contact between Agency inspectors and the carriers also helps to impress on the industry the importance of awareness and vigilance in improving service to customers with disabilities.

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

Communication Code

In 2003, the Agency completed work on a fourth code of practice on Removing Communication Barriers for Travellers with Disabilities (the Communication Code), following a public consultation process in which many concerns were raised and addressed.

The new code includes a set of criteria for improving communications and access to information for travellers with disabilities, and will apply to air, rail and ferry transportation service providers. Although this code will focus on the information needs of travellers with disabilities, it is expected to benefit all travellers. The Agency will release the Communication Code in 2004 and will develop a questionnaire for monitoring compliance with the code.

The Agency also developed a guide to assist the transportation industry in implementing the Communication Code. This guide may be valuable even to carriers or terminals not covered by the code. It explains the recommendations for changes to signage, public announcements, Web sites, automated kiosks, public telephones, information monitors and other communication tools. During 2003, the Agency consulted with its Accessibility Advisory Committee about the guide, which will be distributed with the new code.

Accessible Transportation Award

The Agency introduced an award in 2003 to recognize best practices in accessible transportation. The Agency believes it is important to acknowledge achievements in the federal



Dialogue and Sensitivity Awareness

The Agency received a complaint on behalf of a youth who uses a specially designed wheelchair and who had requested, when booking an Air Transat flight, that his wheelchair be delivered to the aircraft door upon landing in Calgary. Although Air Transat personnel had confirmed during check-in at the airport in Puerto Vallarta, Mexico, that the youth's wheelchair would be delivered to the aircraft door, the carrier's ground-handling personnel in Calgary delivered the wheelchair to the baggage claim area. The youth had to be assisted through the Calgary terminal in an airport wheelchair on his mother's lap.

The Agency found that the failure to deliver the traveller's personal wheelchair to the door of the aircraft constituted an undue obstacle to his mobility. It also found that the level of service provided by personnel during the deplaning process constituted an undue obstacle to his mobility, on the basis that the only option for transporting the traveller through the airport provided to him, being on his mother's lap, resulted in a humiliating experience for him.

The Agency noted that this was an unjustifiable departure from Air Transat's established policies and that, under the Personnel Training for the Assistance of Persons with Disabilities Regulations, Air Transat's personnel should have received training on its policies and procedures for persons with disabilities. The Agency found that the failure to have an appropriate level of dialogue, as well as the lack of sensitivity to

and awareness of the particular concerns of the youth and his mother regarding his sense of safety and security in the airport wheelchair resulted in circumstances that seriously detracted from his travel experience. The Agency also found that the manner in which the Air Transat agent provided the wheelchair assistance from the aircraft door to the baggage claim area in the Calgary airport constituted an undue obstacle to the person's mobility, given that the traveller's feet were protruding at angles beyond the borders of the wheelchair and that, as a result, he was exposed to a situation that had the potential of causing him physical injury.

The Agency ordered Air Transat to provide a written apology to the traveller and his family; and, among other matters, to issue a bulletin to its personnel and contractors at the Calgary airport that reinforces the importance of following the carrier's policies and procedures with respect to persons with disabilities; initiating discussions to ensure that the needs and abilities of persons with disabilities are clearly understood; and being sensitive and constantly alert to the needs of travellers with disabilities in order to determine the appropriate assistance required in various situations.



transportation industry toward eliminating undue obstacles to the mobility of persons with disabilities.

Since the codes of practice for air, rail and marine transportation came fully into force in early 2002, the Agency's monitoring activities have been comprehensive. Monitoring has required industry participation and one industry representative, Marine Atlantic, stood out in both achieving the accessibility goals promoted by the Agency and in setting an example for other transportation service providers. Marine Atlantic Inc. runs a year-round ferry service between Port aux Basques in Newfoundland and Labrador, and North Sydney in Nova Scotia. It also provides a summer-season service between the two provinces, from Argentia to North Sydney.

Some areas in which Marine Atlantic showed excellence were:

- it has an ombudsman for complaint resolution;
- it has an Accessibility Advisory Committee, which includes members of the community of persons with disabilities;
- it hired a consultant to advise on its particular accessibility issues;

- it provides sensitivity training for staff on a regular basis;
- it conducted a customer satisfaction survey, which included questions on the level of service provided to passengers with disabilities, the results of which helped identify customer concerns specific to its own operations;
- in striving for 100-per-cent compliance with the Ferry Code, it went above and beyond what was required by improving the level of accessibility not only on its ferries but also in its terminals; and
- its facilitation and cooperation with Agency staff during its assessment of the level of accessibility of its ferries was exemplary.

Accessibility features adopted by Marine Atlantic include:

- appropriate signage at key points within the terminals and aboard the ferries;
- most general passenger areas, including the cafeteria, are designed to be completely accessible to persons with disabilities (e.g. lowered counter tops in the dining areas);
- terminals are equipped with passenger elevators providing access to all floors;
- two cabins have been designed to meet the accessibility

requirements of persons with disabilities, including wider doorways, increased floor space, accessible controls and outlets and a fully accessible washroom, as well as flashing lights for persons who are deaf;

- sonic and visual alarm systems;
- closed-caption television;
- shipboard relieving areas for service animals; and
- tactile and braille signage is being introduced on the elevators and, as the elevator doors are opened, the decks will be announced.

After the award was presented in early 2003, Marine Atlantic continued its efforts to improve communications with passengers. In collaboration with its Accessibility Advisory Committee, the carrier worked on a travel guide to enhance the experience of passengers with disabilities using their services.

Travelling with Service Animals

Over the years, the Agency has been alert to concerns regarding the challenges of travelling with service animals (guide dogs), such as allergies, space and seating requirements, and relieving areas for the animals. In 2003, the Agency collaborated with Transport Canada to examine these issues.



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A workshop, hosted by Transport Canada, was attended by members of the transportation industry, service dog trainers and service dog users. At year end, a report was being prepared to discuss the difficulties of travelling with service animals in the federal transportation network. In 2004, the Agency will review the report with Transport Canada and work towards identifying possible solutions.

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

During 2003, the Agency continued to participate on the Canadian Standards Association's (CSA) Technical Subcommittee on Barrier-Free Design for Dispensing Machines. The standard will set out requirements for making interactive machines accessible to persons with a wide range of physical, sensory and cognitive abilities. In 2004, the Agency will continue its work with this subcommittee. The Agency will also work with the CSA on harmonizing the Barrier-Free Design Standard (B651) with the International Standards Organization's standards on accessibility.

Terminal Accessibility

As air terminals across Canada are modernized, the Agency promotes the new features and amenities that benefit travellers with disabilities. A number of newly renovated terminals were visited in 2003 and innovative changes were noted, including:

- At the St. John's International Airport, arrival and departure screens at eye level, distinctive easy-to-read signage and a lowered counter for use by passengers in wheelchairs.

- At the Halifax International Airport, drop-off and pick-up spaces at the front of the terminal with the disability parking symbol, accessible tables in the food court area, and a program to familiarize travellers with disabilities who are not frequent flyers with airport procedures.
- At the Vancouver International Airport, assistive listening devices at check-in counters, TTY public pay phones and tactile way-finding markings to assist persons who are blind.
- The newly opened Macdonald-Cartier International Airport in Ottawa received the 2003 Accessibility By Design Award from the City of Ottawa. New accessibility features include tile patterns that assist people with various visual impairments, textured or slightly elevated flooring to indicate the location of an escalator, and four elevators large enough to easily accommodate passengers with wheelchairs.

In 2004, the Agency will continue to visit transportation terminals and identify best practices in barrier-free design to assist in the future development of a Code of Practice on Transportation Terminal Accessibility.

Security

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

In 2003, the Agency worked closely with the Canadian Air Transport Security Authority (CATSA) to promote accessibility in new security screening programs. Efforts are under way to develop a memorandum of understanding to facilitate the monitoring of security screeners' training in conformity with the Personnel Training for the Assistance of Persons with Disabilities Regulations, which are administered by the Agency. Training issues regarding the security screeners were discussed at the national meeting of the Agency's field investigators in 2003. CATSA representatives attended and made a presentation.

CATSA officials also attended a meeting of the Agency and its Accessibility Advisory Committee, and participated in a discussion on accessibility concerns. CATSA officials were given advice on appropriate ways to serve persons with disabilities at airport screening points. This information has been incorporated on the CATSA Web site and other promotional material.

Promoting Effective Training

The Canadian air passenger industry is changing rapidly as new service providers enter the marketplace and existing carriers expand their operations. The training of personnel to provide assistance to customers with disabilities is especially important at this time. In 2003, Agency staff worked with air carriers to ensure that training needs were addressed.

The Personnel Training for the Assistance of Persons with Disabilities Regulations require carriers to ensure that their employees and contractors are properly trained to assist travellers with disabilities. Agency staff carries out regular inspections to ensure that the Regulations are followed. Agency staff also provides information and advice to carriers to assist them in educating their personnel.

In 2003, CanJet incorporated Agency publications into the curriculum of its training courses for new and existing staff. Agency staff met WestJet officials and held further consultations in 2003 to assist the carrier in refining its rules for provision of services to passengers with disabilities.

As Skyservice expanded its charter passenger program in 2003, training materials were distributed to ground staff at foreign destinations so that contractors' personnel could learn more about Canadian service standards for persons with disabilities.

EDUCATION AND LIAISON

Much of the Agency's work in accessible transportation involves educating both service providers in the federal transportation network about the needs of travellers with disabilities, and informing persons with disabilities about the programs and literature that are available to them.

As the population of Canada ages, the Agency recognizes that there will be an increasing need to ensure that transportation systems are accessible to persons with disabilities. With this in mind, the Agency carried out several initiatives in 2003 to educate and inform the Canadian public about accessibility issues.

Accessibility Complaint Guide

The Accessibility Complaint Guide explains the Agency's role in dealing with complaints and the steps required to file an application about an accessibility issue with the

Agency. In 2003, the guide and the complaint form were updated to help ensure a more efficient processing of complaints. The Agency's Accessibility Advisory Committee was consulted on proposed changes and the Committee's suggestions were incorporated in the revised guide. The guide is available on the Agency's Web site (www.cta.gc.ca) or by contacting the Agency.

Letter to Travel Agencies and Airlines in Canada

On June 30, 2003, Agency Chairman Marian Robson sent a letter to all travel agencies and airlines operating in Canada outlining some of the problems encountered by travellers with disabilities. Many of these difficulties arise from a lack of clear communication with travel agencies, tour operators and carriers. Identifying these problems is an important step toward eliminating obstacles.

The Agency letter suggested how to improve the dialogue between persons with disabilities and travel agents and airlines' reservation staff. Included in the letter was the Agency's Reservation Checklist — Air Travel, an easy-to-use guide for travel agents to assess and document the needs of all customers. The Reservation Checklist — Air Travel is available on the Agency's Web site or by contacting the Agency.



Finding Space for a Guide Dog

A person who is blind and uses a certified guide dog contacted the Agency because she was having difficulties with seating accommodation for herself and her dog on the Airbus A319 and A320 aircraft operated by Air Canada. Initially, it had been suggested that the guide dog could sit under an aisle seat with its legs protruding in the aisle. Agency staff contacted Air Canada to identify the problem and to see what arrangements could be made.

Persons with disabilities are not allowed to sit in bulkhead seats with certain aircraft configuration because of safety concerns relating to the AMSAFE (inflatable) seat-belt being deployed and the possible injury to service animals. (This issue is being reviewed by Air Canada and Transport Canada.) Alternative seating arrangements were provided by Air Canada prior to travel and were confirmed with the passenger with the disability. The passenger later wrote to the Agency. "I did want to write to let you both (i.e. the Agency and Air Canada) know that we had a good experience on our travels from Ottawa to Las Vegas on Air Canada. Our seating arrangements, which were made through both of your offices, worked out very well".



AGENCY PUBLICATIONS

The Accessibility Complaint Guide and the Reservation Check-list are available at the Agency's Web site:
http://www.cta-otc.gc.ca/access/common/publication_e.html.

Anyone wishing to obtain a hard copy or multiple format should contact:

Chief of Publishing
Canadian Transportation Agency
Communications Directorate
15 Eddy Street
Gatineau, Québec
K1A 0N9
Telephone: (819) 994-0775
Toll-Free: 1 888 222-2592
TTY: 1 800 669-5575
Fax: (819) 953-8353
E-mail: cta.comment@cta-otc.gc.ca

Accessible Transportation Web Site

In the autumn of 2002, Transport Canada launched the Access to Travel Web site (www.accesstotravel.gc.ca) to supply information on accessible transportation services across the country. The site aims to make accessible travel easy and enjoyable for persons with disabilities, seniors and other travellers with unique needs. The Agency continued to assist Transport Canada in developing a Web site on accessible transportation services in 2003.

Transport Canada's efforts in 2003 were focused on securing the participation of the provinces and territories, and on expanding the database to include useful facts and links to information sources on accessible transportation across Canada.

Communicating with Canadians

The Agency encourages persons with disabilities from across Canada to actively discuss the Agency's accessible transportation activities. The Agency solicits comments and suggestions at community meetings, discussion forums and public awareness events, where it also provides tips for travellers with disabilities.

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

Some concerns raised in 2003 included: travelling to the United Kingdom with a service animal, travelling with insulin and syringes, independent travel for persons who are deaf and blind, security screening of hearing aids, requirements for photo identification for air travel in Canada, and accessibility standards for ships conducting Alaska cruises from Vancouver.

Since many Canadians make travel arrangements through travel agents, the Agency promotes accessible transportation to travel agents and tour operators. During 2003, the Agency participated in exhibits at nine travel-industry shows in various Canadian cities.

The Agency participated in eight seminars for interested travellers with disabilities. The Agency also continued to promote uniform service standards for Canadians with disabilities travelling abroad.

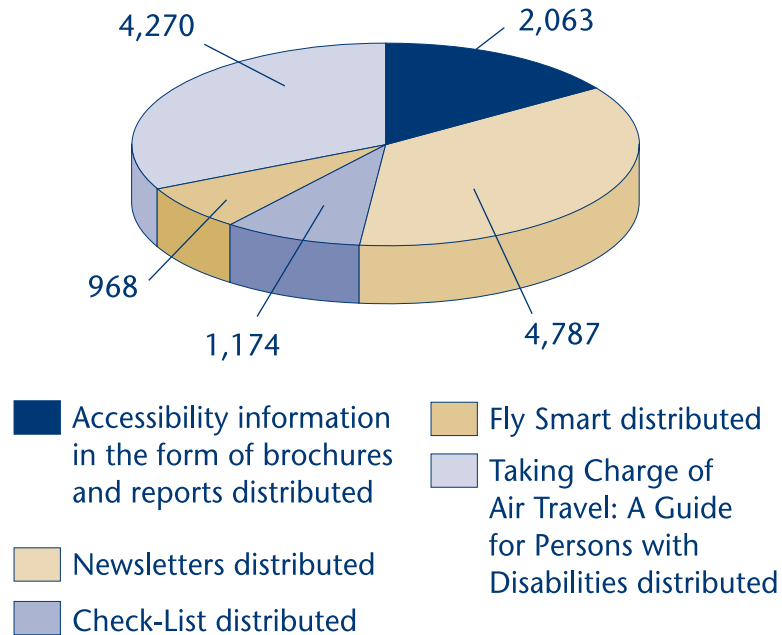
In 2003, the Agency responded to numerous international inquiries about Canada's approach to accessible transportation, including a request from Ireland to use the Agency's Air Travel Survey questionnaire material. The Agency also participated in the Seventh World Congress of the Society for Accessible Travel and Hospitality.

The Agency will be an active participant in TRANSED, the 10th International Conference on Mobility and Transport for Elderly and Disabled People, in Hamamatsu, Japan, in May 2004. The Agency submitted three papers in 2003 for presentation at that conference. Canada will host TRANSED 2007 and is part of the steering committee to plan the 2007 event.

Accessible transportation has been designated as a theme for National Transportation Week 2004. The Agency will play a key role in supporting the organizers to plan this June event.

Communicating with Canadians

Figures for 2003



Agency Program Cited as Best Practice

In October 2003, the Agency's accessible transportation program was featured as a best-practice project in a report by the Asia-Pacific Economic Corporation (APEC). The report, called *Best Practices in Tourism Accessibility for Travellers with Restricted Physical Ability*, was released by the APEC Tourism

Working Group following a study that involved K roul and the Canadian Tourism Commission. The report had been initiated in July 2000, after the adoption of the Tourism Charter at an international meeting of tourism ministers, which included a policy goal of "increasing mobility of visitors and stimulating demand for tourism goods and services in the APEC region".

The APEC report defined a best practice in tourism accessibility as one that is replicable, transferable or adaptable, meaning that it is an initiative conducted successfully and with a tangible impact on improving people's tourism experiences.

The report found that the Agency's accessible transportation program was of interest to other countries because of:

- its global approach to accessibility issues for persons with disabilities;
- its implementation of regulations and standards;
- its partnership with public and private sectors and with organizations for persons with disabilities;
- the availability of information, guidance and publications on the Agency's Web site; and
- the Agency's work in the resolution of complaints.

CASES BEFORE THE COURTS

Federal Court of Appeal – Cases Pending in 2003

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

Court File No.: A-100-03

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

Appeal stayed by order of the Ontario Superior Court of Justice, dated April 1, 2003, made pursuant to the *Companies' Creditors Arrangement Act*.

VIA Rail Inc. v. Council of Canadians with Disabilities

Court File No.: 03-A-61

Applications for leave to appeal 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.

Federal Court Trial Division – Cases Decided in 2003

VIA Rail Inc. v. Council of Canadians with Disabilities

Court File No.: T-2311-03, T-2312-03

Application for a stay of Agency Decision Nos. 175-AT-R-2003 and 620-AT-R-2003 pending determination of the applications for leave to appeal those decisions.

The Federal Court Trial Division granted the stay applications on December 17, 2003.

CHAPTER 2

AIR TRANSPORTATION



CSTM/CN000260

In 1938, the Board of Transport Commissioners was established with authority over Canada's emerging airline industry. Trans-Canada Airlines was the country's first publicly owned airline, with a monopoly over international and transcontinental routes, and over airmail service. In 1944, authority over airlines was passed to a separate Air Transport Board. In 1967, the Canadian Transport Commission replaced the Board of Transport Commissioners and the Air Transport Board. Later in 1988, the National Transportation Agency was created with a mandate that called for less stringent regulation. Through the years, the Government of Canada's transportation policy has moved away from regulation to more reliance on market forces. The Canadian Transportation Agency, established in 1996, has authority over air licensing and dispute resolution. In 2000, the position of Air Travel Complaints Commissioner was created to review consumer complaints against airlines and to mediate, where necessary.

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



The international air industry continued to cope with the effects of political and economic uncertainties in 2003. The air travel sector has faced lower traffic demand and higher operating costs since the terrorist attacks of September 11, 2001. The war in Iraq in early 2003 continued to weigh down a recovery. The Canadian air industry suffered a further setback, with the outbreak of severe acute respiratory syndrome (SARS) in Canada, with a resulting drop in tourism.



©Canada Aviation Museum, Ottawa

In the spring of 2003, after several months of financial problems, Air Canada, the country's largest airline, was granted creditors' protection under the *Companies' Creditors Arrangement Act*. By the end of the year, Air Canada's future was still undecided. Meanwhile, WestJet, an airline based in Western Canada, continued to expand its market share. Other airlines, notably Jetsgo and CanJet, also increased their routes.

The Canadian Transportation Agency, for its part, was unable to deal with any complaints regarding Air Canada while it was under creditors' protection in 2003.

Other issues that the Agency did address during the year included the first appeal in Nav Canada's history against an increase in its service charges, and applications for temporary fifth-freedom charter rights by foreign air carriers to make direct deliveries of fresh seafood from Atlantic Canada to Europe.

The Agency also ordered KLM and Northwest Airlines to take corrective measures after they refused to respect tickets bought through Travel Way Services Inc., a travel agency that allegedly did not remit the funds it had collected to the air carriers.

Air Canada and the *Companies' Creditors Arrangement Act*

On April 1, 2003, Air Canada and certain of its affiliates, including Jazz Air Inc., and Zip Air Inc., were granted protection from creditors under the *Companies' Creditors Arrangement Act* (CCAA). Mr. Justice James Farley of the Ontario Superior Court of Justice issued a Stay Order that

stipulated that during the Stay period "no suit, action, enforcement process, extra-judicial proceeding or other proceeding including a proceeding in any court, statutory or otherwise ... against or in respect of an Applicant or any present or future property, rights, assets or undertaking of an Applicant ... shall be commenced and any and all proceedings against or in respect of an Applicant or the Applicant's property already commenced be and are hereby stayed and suspended...".

That Order, initially in effect until June 30, 2003, was later extended beyond December 31, 2003. It effectively removed Air Canada, Jazz and Zip from regulatory and legislative jurisdiction until the company restructured and emerged from court protection. As long as the Stay Order remained in effect, unless Air Canada, Jazz or Zip agreed, the Agency was unable to carry out any activities relating to complaints or investigations involving Air Canada.

On the other hand, when Air Canada applied for new licences, charter permits or other authorities, the Agency proceeded in its usual manner, and where Air Canada met the legislative or regulatory requirements, the Agency issued the requested authorization for the benefit of Air

Canada. More than 50 regulatory approvals were granted to Air Canada between April 1 and December 31, 2003. The Agency also continued to consult Air Canada, along with other Canadian carriers, on a variety of applications for proposed air services by foreign air carriers.

Nav Canada Charges

On May 15, 2003, Nav Canada, which provides air navigation services across Canada, filed a notice proposing an average 6.9 per cent increase in its service charges, effective August 1. The notice was filed with the Agency, under Section 36 of the *Civil Air Navigation Services Commercialization Act*, S.C.1996, c.20. Users were given until July 14 to discuss the notice of revised service charges with Nav Canada.

On July 21, Nav Canada filed an announcement of revised service charges, reflecting the same increase, under Section 37 of the Act. On August 20, Air Canada filed an appeal with the Agency opposing the revised charges.

The Agency dismissed Air Canada's appeal on November 19, stating that it was satisfied the increase was set "at a level that the revised charges would not exceed Nav Canada's current and future financial requirements in the

provision of air navigation services". The Agency also stated the "revised charges are not inconsistent with international obligations" of the Government of Canada referred to in the *Civil Air Navigation Services Commercialization Act*.

The Agency pointed out that Nav Canada had reduced and deferred a number of its costs, had operated at a deficit for two years and had spread out the recovery of costs, identified as financial requirements under the Act, over five years rather than over a shorter period.

Seafood Charters

The Atlantic fishing industry and shippers of seafood products sought additional air services in 2003, primarily charter flights, directly from Halifax to points in Europe. The shipment of seafood and live lobsters is a delicate operation and is vital to the Atlantic fishing industry. Shippers must be assured that their perishable products will reach their markets in a timely fashion. In the Agency's view, prompt handling and delivery are key elements for the industry as it looks for new markets. In response to these needs, the Agency approved a number of fifth freedom charters and extra-bilateral routing requests during 2003.

When considering applications for fifth-freedom charter services to carry seafood, the Agency takes into consideration the views of Canadian carriers as required by Canada's international cargo charter policy. In 2003, the Agency granted an application from MK Airlines Limited, a licensee from the Republic of Ghana to operate a number of fifth-freedom entity cargo flights from Halifax to Zaragoza, Spain, a major seafood processing centre. As well, the Agency granted charter permits to the U.S. air carrier Polar Air Cargo to operate a number of fifth-freedom charter flights to transport fresh seafood between Halifax and Liege, Belgium. Over the course of the year, the Agency dealt with a number of other requests for fifth-freedom charter permits to carry seafood.

On June 2, 2003, the Governor-in-Council issued an Order that rescinded the April 4, May 15 and May 29 Agency decisions that granted fifth-freedom all-cargo charter permits to MK Airlines Limited for certain flights between Canada and Europe. The Order stated that the Agency, in approving these flights, applied policies relating to fifth-freedom entity all-cargo charter flights whereas the flights were in fact seventh-freedom entity all-cargo charter flights. Upon application for judicial review by MK Airlines Limited and the charterer, the Federal Court of Canada, on

November 7, declared that the all-cargo charter flights for which MK Airlines Limited received approval from the Agency met the definition of fifth freedom pursuant to the Air Transportation Regulations.

In the area of scheduled operations, Icelandair, which operates limited all-cargo services between Iceland and Halifax, was permitted to operate additional flights and to modify the routing of some flights.

KLM and Northwest Airlines re. Travel Way Services Inc.

On April 30, 2003, the Agency ordered KLM and Northwest Airlines to take corrective measures after the two air carriers refused to honour tickets issued by Travel Way Services Inc. In October 2002, Travel Way Services had sold more than 700 tickets, worth about \$1.5 million, and allegedly failed to remit the money to the airlines involved, including Air Canada, British Airways, BWIA-West Indies Airways, KLM, Lufthansa and Northwest. While British Airways and BWIA-West Indies Airways honoured all of the tickets sold by Travel Way, no other carriers had done so. The matter was referred to the Agency by Air Travel Complaints Commissioner Liette Lacroix Kenniff after her office received more than 100 complaints.

The Agency ruled that passengers had bought tickets from a bona fide agent of the carriers and therefore they held valid tickets. In the Agency's opinion, KLM and Northwest's refusal to accept the tickets resulted in their failing to respect their tariffs. Accordingly, the Agency ordered these carriers to transport the ticket-holders, at no additional charge, to their original destinations within one year of the date of the Agency's decision or to reimburse the cost of the tickets. The Agency also directed KLM and Northwest Airlines to pay compensation for expenses incurred by people who had been adversely affected by the failure of these carriers to apply the specific provisions of their tariffs. The carriers appealed the decision to the Federal Court of Canada.

An investigation into tickets sold by Travel Way for travel on Lufthansa, which had also refused to accept tickets sold by Travel Way, was put on hold pending the court decision on the KLM/Northwest Airlines appeal. Air Canada advised that it was still reviewing its position on Travel Way tickets. Because of the court-imposed protection of Air Canada, the Agency was constrained from taking further action in 2003.

Air Travel Complaints Commissioner

In October, the Transport Minister renewed the appointment of Liette Lacroix Kenniff as Canada's Air Travel

Complaints Commissioner. The Commissioner reviews and attempts to resolve written air travel complaints that have not been resolved by an air carrier to the satisfaction of the consumer.


The Office also provides a semi-annual report to the Governor-in-Council, through the Minister of Transport, outlining the number and nature of the complaints received, the manner in which the Commissioner dealt with them, the carriers involved and any systemic problems detected. All reports and information are available on the Agency's Web site (www.cta.gc.ca). The Office of the Air Travel Complaints Commissioner can be reached at a toll-free telephone number (1 888 222-2592) or TTY (1 800 669-5575).

The Air Travel Complaints Commissioner's program was introduced in 2000 to protect the interests of the travelling public. Although some temporary funding was available from Transport Canada for the first few years of the program, at year's end no funding had been secured for 2004–2005 or future years.

Some internal resources were reallocated to this program. However, given the Agency's limited financial resources and



A Child Travelling Alone

 A 10-year-old girl travelled unaccompanied on a Jetsgo flight from Montréal to Vancouver, via Toronto. The child's mother had informed Jetsgo that the child would be met by her aunt in Vancouver. When the aunt called Jetsgo to verify the time of arrival, she was told that the flight would arrive at 13:45. However, it arrived 35 minutes earlier at 13:10. The child left the aircraft without adult supervision and was found by her aunt walking with strangers down a hallway. The child's mother asked Jetsgo for a copy of the Unaccompanied Minor Release form, which should have been signed by the child's aunt in Vancouver. An agent for Jetsgo told the mother that no such form was available. During the Agency's investigation of this incident, Jetsgo agreed to have the mother travel to Vancouver to accompany her daughter back to Montréal. Unfortunately, the mother became ill prior to the trip, so Jetsgo arranged for a "sitter" to accompany the child to Montréal. As a result of the Agency's investigation, Jetsgo has changed its procedures for handling unaccompanied minors.



the legislative requirement to deliver on other mandates, permanent funding is essential for the Agency to continue to provide this consumer protection service to Canadians and to respond to any additional mandates resulting from legislative change. Initiatives are being taken to secure this funding.

The Office of the Air Travel Complaints Commissioner received 1,058 written complaints in 2003, most of which were handled by the Commissioner's informal complaints resolution process. Nine complaints were transferred to the Agency to be handled by Members through formal adjudication.

Types of Complaint Issues Received in 2003

	Jan-Jun	Jul-Dec	Total	%
Quality of Service	474	515	989	39
Schedule	251	177	428	17
Ticket	172	150	322	13
Baggage	176	145	321	13
Reservations	66	61	27	5
Safety	51	35	86	3
Refusal to Transport	34	52	86	3
Frequent Flyer Program	39	28	67	3
Denied Boarding	28	37	65	3
Fares	22	7	29	1
Unaccompanied Minor	3	9	12	0
Charges	6	4	10	0
Allergies	2	4	6	0
Cargo	2	4	6	0
Systemic Problems	2	0	2	0
Smoking	0	2	2	0
Total	1,328	1,230	2,558	100

The total number of complaint issues may differ from the number of complaints because one complaint can involve several issues, e.g. one complaint may involve issues about quality of service, loss of baggage and scheduling problems.

Data may differ from the semi-annual Air Travel Complaints Commissioner's reports because of the dynamic nature of the complaints database. Complaints are tracked in the database by their status at the time of reporting and complaint issues may change.

Tariffs

Air carriers operating a publicly available air service in Canada are required to publish a tariff, setting out terms and conditions of carriage, fares, rates and charges. The 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.

Agency staff reviews international tariffs and amendments to ensure that they are consistent with Canadian law and the applicable bilateral agreements. In 2003, the Agency received 16,030 tariff submissions from airlines proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs on statutory notice. In addition, the Agency received 7,025 special requests to

A breakdown of complaints received in 2003, involving the five most frequently named Canadian carriers and complaints involving foreign carriers.

Carriers Involved in Complaints Received

	Jan-Dec	%
Air Canada *	486	48
Air Transat	107	11
Skyservice	83	8
Jetsgo	46	5
Canadian Western Airlines	37	4
Other Canadian airlines	41	4
Foreign airlines**	203	20
Total	1,003	100

* Air Canada includes its affiliates.

** Does not include complaints in which no specific air carrier was mentioned.

Complaints involving multiple carriers are counted as individual complaints against each carrier.

amend tariffs on other than statutory notice. Statutory notice is the time period set out in the bilateral agreement for filing tariffs and amendments. It can be as short as

24 hours and as long as 60 days. In general, a filing on statutory notice will come into effect at the end of the statutory notice period unless the Agency intervenes, while special permission applications usually require approval before they come into effect.

Ninety-five per cent of the tariff submissions were received and processed electronically. The electronic tariff submission system, speeds the filing process and gives airlines more flexibility.

In 2003, Agency staff was asked to assist Transport Canada in the review of the Computer Reservations System Regulations. Draft regulations were published in Part I of the *Canada Gazette* in 2003.

In 2003, the Tariff Division responded to 40 written inquiries, successfully resolved 16 inter-carrier disputes concerning allegations of improper international pricing methods, referred 11 tariff applications to the Agency for a formal decision and completed eight investigations, four relating to allegations that a carrier had failed to respect its tariff, and four regarding allegations that a carrier's tariff was unjust or unreasonable.

Surcharges

In 2003, the Agency considered a number of applications relating to surcharges for fuel and insurance, resulting in seven related rulings or determinations. In its rulings, the Agency expressed concern that the ever-increasing use of surcharges limits a consumer's ability to compare advertised air fares, because the advertised price does not usually disclose the true price at the time of purchase. The Agency encourages carriers to make every effort to incorporate extra charges into their air fares and avoid surcharges. A surcharge should only be used as a temporary measure to respond to unforeseen and unavoidable increases in carrier costs. The Agency will monitor this situation in 2004.

Air Carrier Licensing

The Agency licenses Canadian air carriers to transport passengers or cargo within Canada. It also licenses Canadian and foreign applicants to operate scheduled and non-scheduled (charter) international air services to and from Canada. In 2003, the Agency processed 1,108 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. Section 59 of the Act prohibits air services proposed by an applicant to be sold or offered for sale in Canada before the licence is granted.

During the autumn of 2003, Agency staff responded to numerous queries from the travelling public concerning an air service to India being offered by Canadian Western Airlines Inc., using a Boeing 747 aircraft. It was noted that Canadian Western Airlines was licensed to use small aircraft only. On September 19, the Agency issued a cease and

Air Carriers by Nationality

	Carriers holding Agency licences as of December 31, 2002	Carriers holding Agency licences as of December 31, 2003
Canadian	854	849
United States	730	706
Other	107	114

desist order to Canadian Western Airlines, ordering it to stop the sale of tickets in Canada on an air service for which it did not hold a proper licence. At the end of December, the carrier was no longer operating an air service.

Canadian Ownership and Control

In 2003, the Agency completed 121 reviews to verify that Canadian applicants proposing to operate or already operating domestic or international air services met Canadian ownership requirements, as defined in the *Canada Transportation Act*. Eighteen reviews involved major investigations because the companies had complex ownership structures, or they had non-Canadian minority

shareholders or business associates who might have exercised control over the applicant. The Agency denied four applications because the applicants failed to establish that they were Canadian.

Financial Fitness

Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats must meet financial requirements stipulated in the *Canada Transportation Act* and in the Air Transportation Regulations. Applicants must prove they have enough liquid funds to cover all start-up, operating and overhead costs for 90 days. These requirements are designed to ensure that applicants

Licence Authorities Held by Nationality

Services	Canadian					United States	Other	Total
	Aircraft Type							
	Small	Medium	Large	All cargo	Total			
Domestic	823	19	14	34	890	—	—	890
Non-scheduled international	392	17	14	25	448	695	93	1,236
Scheduled international	14	30	87	4	135	50	62	247
Total December 31, 2003*	1,229	66	115	63	1,473	745	155	2,373

* For comparison, the total on December 31, 2002, was 2,380.

are financially fit and have a reasonable chance of success, which in turn minimizes disruptions in service and protects consumers. In 2003, the Agency completed three financial fitness reviews that involved existing licensees.

Air Licensing Activities		
	Completed in 2002	Completed in 2003
Applications for:		
New licences	159	185
Amendment of licences	125	61
Suspensions	249	200
Cancellations	80	56
Reinstatements	88	55
Exemptions/rulings	178	146
Other	5	6
Agency initiated:		
Suspensions	207	204
Cancellations	135	119
Reinstatements	60	76
Total	1,286	1,108

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

Of the 185 applications for new licences, 11 were denied, 11 were withdrawn and 163 resulted in a new licence being issued in 2003.

Of those, 15 licences were issued to the following seven Canadian applicants for the operation of an air service using large aircraft (seating capacity of at least 90 passengers):

- Air Transat A.T. Inc., carrying on business as Air Transat, was granted authority to operate scheduled international services between points in Canada and points in Poland, Mexico and in the Dominican Republic.
- Air Canada was granted authority to operate scheduled international services between points in Canada and points in Aruba, Cuba and Grenada.
- HMY Airways Inc. was granted authority to operate a domestic service and a scheduled international service between points in Canada and points in the United States.

- Skyservice Airlines Inc./Lignes Aériennes Skyservices Inc., carrying on business as Skyservice, was granted authority to operate a scheduled international service between points in Canada and points in the United Kingdom.
- Zoom Airlines Incorporated was granted authority to operate scheduled international services between Ottawa and Cancun, Mexico, and also between points in Canada and points in the United Kingdom, and points in the Dominican Republic.
- Air NorTerra Inc., carrying on business as Canadian North, was granted authority to operate a non-scheduled international service*.
- Zip Air Inc., carrying on business as Zip, was granted authority to operate a non-scheduled international service* and a scheduled international service between points in Canada and points in the U.S.

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

The Agency also granted 12 exemptions to Section 59 of the Act, which prohibits selling services prior to holding a licence. To protect consumers purchasing travel from the

unlicensed carriers, the Agency requires that any funds received have to be held in a trust account by the carrier and that before any reservation can be made, all passengers must be notified that the air service is subject to government approval. As well, all advertising issued in the carrier's name has to contain this information. The prospective carrier is also obliged to make arrangements with a licensed carrier to transport all passengers at no additional cost to them, if the licence is not issued in time for the travel dates booked.

Discontinuance or Reduction of Domestic Air Services

In 2003, the Agency dealt with nine issues related to the notice requirements of Section 64 of the Act for discontinuance or reduction in air services.

Under Section 64, an air carrier must give notice of its intention to discontinue or reduce domestic air services when:

- the discontinuance would result in only one or no air carrier serving a point;
- an air carrier proposes to reduce the frequency of an air service to less than one flight per week, so that only one

or no air carrier would serve that point at least once per week; or

- the discontinuance of a year-round, non-stop scheduled air service between two points in Canada would reduce capacity on the route by 50 per cent or more.

The air carrier must give 120 days' notice to the Agency, the Minister of Transport, the minister responsible for transportation in the affected province or territory, and to the affected communities, unless the air service has operated for less than a year. In the latter case, the notice period is 30 days. An air carrier may ask the Agency to reduce the notice period.

The *Canada Transportation Act* also requires that any air carrier wishing to discontinue or reduce service must provide an opportunity for elected officials of the municipal or local government of the affected communities to meet and discuss with the air carrier the possible impact this may have. If, after receiving a written complaint, the Agency determines that a licensee did not give proper notice, the Agency may order that air service be reinstated for up to 60 days. A licensee that has given proper notice cannot be prevented from discontinuing or reducing air service.

On May 12, 2003, the Agency was notified by WestJet of its proposed discontinuance of year-round non-stop scheduled air services between Sault Ste. Marie, ON, and Hamilton, ON, as well as between Sault Ste. Marie and Winnipeg, MB, on September 9, 2003; and between Hamilton and Sudbury, ON, as well as between Sudbury and Winnipeg, on September 10. The notices were provided in English only in newspapers in the areas affected by the discontinuance. Under order from the Agency, WestJet published two notices in French on September 6, relating to the discontinuations on both September 9 and 10.

On July 2, 2003, Go Air Express advised the Agency of a temporary discontinuance of air services between Pembroke, ON, and Toronto, ON, effective June 30, 2003. In this case, the Agency clarified the responsibility of air carriers regarding the notice requirements, referred it to the process set out in the Act should a complaint be filed and advised that the Agency could take action under the administrative monetary penalties program. No complaints were filed in this case.

In four cases involving complaints, the Agency decided that Section 64 did not apply. The cases were either dismissed or referred to the Air Travel Complaints Commissioner.



SARS Outbreak

A passenger was refused transportation on an Air France flight from Toronto to Paris, en route to Jordan, on May 5, 2003. The carrier had been notified that Canadian residents would be denied entry to Jordan because of the SARS outbreak in Toronto. Although Air France was justified in its refusal to transport and refunded the passenger his unused ticket, it withheld a \$250 cancellation fee for which there was no provision in its tariff. Following the Agency's intervention, this fee was refunded.



In another complaint alleging that Air Labrador failed to respect its obligations regarding its proposal to discontinue its service in Newfoundland and Labrador between St. Lewis and Port Hope Simpson, and between St. Lewis and Mary's Harbour, the Agency ordered the carrier not to implement its proposal until 72 days after publication of a notice of discontinuation.

The Agency also received two requests for an exemption from giving notice or for a reduction in the notice period. In those cases, the Agency ordered that a reduced period of notice be provided.

New Liability Regime

A new international agreement that establishes liability in the event of the death or injury of a passenger, loss of baggage or cargo, or delay during international air transport, came into force in Canada in 2003.

The Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montréal in 1999, took effect on November 4. The agreement, also called the Montréal Convention, establishes a liability regime for international air transportation. It updates and modernizes

the Warsaw Convention of 1929. Agency staff is working with airlines and industry associations to develop revised tariff provisions in light of the new agreement.

International Charters

An international charter air service is a non-scheduled international service operated under a contractual arrangement between an air carrier and a charterer. Carriers holding a licence for a non-scheduled international service must get an Agency program permit or an authorization to operate flights from Canada to a foreign country. The permit and authorization processes ensure that air carriers operating international charter flights comply with the Air Transport-

ation Regulations. For certain types of charter flights, carriers must obtain financial guarantees from charterers to protect consumers' advance payments.

Sometimes, carriers are asked to provide a flight outside the Agency's normal working hours. Because Agency authorization is needed before flight departure, the Agency operates an emergency telephone service. In 2003, the Agency handled 386 emergency situations, 123 of them requiring approval by Agency Members.

The Agency is amending the Air Transportation Regulations to reflect the International Passenger Charter Air Services

Charter Permits Issued

	2002	2003
Passengers non-resaleable charters (includes entity charters)	453	740
Cargo non-resaleable (includes entity cargo/livestock and trans-border goods charters)	163	193
Passengers resaleable (includes common purpose charters, combination of advance-booking charters and inclusive tour charters, inclusive tour charters, advance-booking charters and trans-border passenger charters)	878	1,130
Additional statistics: Exemptions granted to the charter regulations	1,008	989

Policy, which came into effect on April 4, 2000, and the International All-Cargo Charter Air Services Policy, issued on May 29, 1998. The Agency began consultations on the amendments in December 2000. In 2002, the amendments, with some modifications, were sent to the Department of Justice for review. It is expected that they will be published in Part I of the *Canada Gazette* in 2004, and comments will be solicited. Until the amendments come into effect, the Agency will exempt air carriers from compliance with certain provisions of the existing regulations that conflict with the new policies. In 2003, the Agency granted 14 such general exemptions.

The proposed amendments reduce the number of international charter types from 10 to 4: passenger resaleable charters, passenger non-resaleable charters, all cargo charters and foreign-originating charters. The provisions for trans-border charters are incorporated into those for international charters so that similar rules would apply to both. The proposed amendments also allow foreign carriers to operate charters under the same conditions as Canadian carriers, provided that the foreign carriers' countries treat Canadian carriers in a similar manner.

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

The International All-Cargo Charter Air Services Policy gives shippers more service options by allowing more than one charter customer to charter an aircraft, and by allowing freight forwarders and consolidators to charter aircraft from licensed carriers and then resell the space to shippers. The policy also allows the Agency to grant special authority to foreign air carriers for Canadian and foreign-originating entity cargo charter flights to or from a third country. During 2003, the Agency approved a total of 131 such applications.

Agreements

Canada currently has 74 bilateral air transport agreements and arrangements. Bilateral agreements and other arrangements between governments provide the legal basis for

regulating international air services. The agreements establish traffic rights for each country.

The Agency participates in the negotiation of air transport agreements, along with officials from Transport Canada and the Department of Foreign Affairs and International Trade, under the leadership of Canada's Chief Air Negotiator. Negotiations include discussions about the cities that may be served, the capacity that may be offered and pricing rules. Agency staff contributes expertise in preparing proposed agreement texts, the implementation of some areas of the agreements, and regulation of air services including charter matters and airline commercial agreements. The Agency also provides information on regulatory activities of other countries obtained from contacts with foreign aeronautical authorities. Once an agreement is established, the Agency, as the designated aeronautical authority for Canada, is responsible for administering the provisions related to economic licensing and regulation.

In 2003, Agency staff participated in 11 negotiations with seven countries and territories. Agency staff attended formal meetings with delegations from France, Vietnam and Russia, and carried on correspondence with Israel,

Luxembourg, Chile and Singapore. Delegations from Canada and Vietnam successfully completed the first air transport agreement between the two countries. Besides strong provisions for aviation safety and security, the agreement provides for extensive rights for code-sharing operations by airlines of both countries.

Three rounds of consultations with the Russian Federation were held in 2003. Although these rounds were not successful in permanently resolving a dispute involving the overflight of Russian territory by Air Canada to serve India, the two sides reached a temporary solution. Further talks are planned in 2004. During 2003, Canada also renewed and/or expanded temporary arrangements to provide for services between Canada and Israel, and between Canada and Singapore.

Reduced demand in air travel and rising costs for fuel, security and insurance have troubled the air industry since the tragic events of September 11, 2001. In 2003, the recovery was set back by the impact of SARS and the war in Iraq. Airlines continued to make use of code-sharing arrangements, in which one airline can sell travel in its own name on flights operated by another airline to expand or maintain international service networks. The Agency

authorized a considerable number of code-sharing services in 2003 and demonstrated flexibility by granting numerous extra-bilateral authorities, thereby substantially assisting Canadian and foreign air carriers during these difficult times.

In 2003, the Agency processed 96 applications relating to bilateral air agreements and arrangements, and commercial arrangements between air carriers, of which 74 were related to code-sharing or the lease of aircraft with flight crew.

The Agency may grant applications for extra-bilateral authority where rights for the proposed services are not provided for in a bilateral agreement or arrangement. Extra-bilateral authority is granted on a temporary basis, and only after the Agency has consulted affected Canadian interests, particularly airlines and airports.

In 2003, the Agency processed 33 applications for extra-bilateral air services involving rights such as code-sharing, providing fifth-freedom services and serving cities not provided for in an agreement or arrangement.

Among applications that were approved in 2003 was the authorization of EgyptAir to provide air service to New York, as a point beyond Montréal, without fifth-freedom rights,



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for the International Air Transport Association (IATA) summer season from March 30, 2003, until October 25, 2003.

The Agency also granted extra-bilateral authorities to permit Condor Airlines of Germany, to carry passengers originating in Canada from Whitehorse to Frankfurt, via Anchorage and Fairbanks, Alaska, as part of a triangular service between Germany and Canada. Under extra-bilateral

authorities, Air Canada, Air Transat and Skyservice were allowed to operate the additional points Punta Cana and La Romana in the Dominican Republic. Air Canada was also allowed to operate the additional points Cayo Largo Del Sur and Santa Clara in Cuba.

Agency staff participated in several forums of the International Civil Aviation Organization such as the Worldwide Air Transport Conference and chaired sessions of the Facilitation Division and the National Facilitation Committee. Agency staff also participated in interdepartmental working groups dealing with safety and security issues.

Domestic Airline Pricing

During 2003, the Agency concluded investigations of two complaints regarding unreasonable fares offered on two different non-competitive routes within Canada.

In one case, the Agency found that the fare in question was not unreasonable when compared to the fares offered by the carrier on a similar competitive domestic route. In the other case, the Agency found that the range of fares offered on the non-competitive route was not inadequate when compared to the range of fares offered by the carrier on a similar competitive domestic route.

In February 2003, after a competitive bidding process, the Agency hired an independent consultant, InterVISTAS Consulting Inc., to undertake a study of domestic airline pricing in Eastern Canada. Increased industry activity in Eastern Canada — including the entry of CanJet and Jetsgo into the market, route expansion by existing carriers, and discontinuance of service by Air Canada Jazz — led to this region being made the focus of the study. In 2002, InterVISTAS had concluded a similar study for the Agency on airline pricing in Western Canada.

InterVISTAS's report, released in November, raised concerns about the fares offered by Air Canada on eight different non-competitive routes: Halifax-Sydney; Fredericton-Montréal; Saint John-Montréal; Montréal-Moncton; Fredericton-Ottawa; Halifax-Gander; Saint John-Toronto; and Bathurst-Montréal.

The major concerns were that fares offered by the carrier on some of the routes were generally more expensive and/or more restrictive than the corresponding fares offered by the carrier on similar competitive routes in Canada; and that the fares at the low end of the range of some of the routes were not as deeply discounted as those offered by the carrier on similar competitive routes.

InterVISTAS also reported that Provincial Airlines used the same pricing strategy on both its non-competitive and on similar competitive routes. A bilingual executive summary of the InterVISTAS report is posted on the Agency's Web site (www.cta.gc.ca). InterVISTAS's full report in print form is available on request.

Pending at the end of 2003 were:

- the issuance of a number of decisions involving Air Canada related to complaints about pricing on certain non-competitive routes within Canada under Subsections 66(1) and (2) of the Act;
- the conclusion of the Agency's own investigation of the fares on the five non-competitive routes in Western Canada identified in a 2002 InterVISTAS report (on pricing in Western Canada) as being possibly unreasonable; and
- the initiation of the Agency's own investigation of the fares on the eight non-competitive routes in Eastern Canada that InterVISTAS identified as being possibly unreasonable in 2003.

When Air Canada emerges from court-ordered protection under the CCAA in 2004, the Agency will proceed with these matters.

Enforcement

The Agency encourages voluntary compliance with the *Canada Transportation Act*, the Air Transportation Regulations and the Personnel Training for the Assistance of Persons with Disabilities Regulations. Agency staff based in Moncton, Montréal, Toronto, Winnipeg, Edmonton and Vancouver conduct periodic inspections and targeted investigations.

The Agency enforces the law through administrative monetary penalties, cease and desist orders, licence suspension, formal reprimands, licence cancellation and prosecutions.

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



Unruly Passenger

The Agency received a complaint from a traveller who, with his travelling companion and five other unrelated passengers, was refused transportation from Varadero, Cuba, to Toronto, because of their alleged unruly behaviour. The complainant sought compensation from WestJet for additional expenses he and his friend had incurred. The Agency found that the passengers' removal from WestJet's aircraft was consistent with WestJet's terms and conditions of carriage as set out in its tariff. However, WestJet's refusal to refund the plaintiff and his companion the unused portion of the air fare was not consistent with its tariff and, therefore, contravened Subsection 10(4) of the Act. The Agency ordered WestJet to refund the unused portion of the air fares. Since the removal of the travellers was permitted under WestJet's tariff provisions, the Agency denied the request for compensation for out-of-pocket expenses.



In 2003, the Agency completed 268 on-site inspections of Canadian-based air carriers and 33 passenger terminal operators. The Agency also conducted 27 investigations of carriers or individuals suspected of operating illegal air services in Canada, and identified a number of contraventions.

The Agency also issued three warnings, none of which was appealed, and four Notices of Violation. Eighty-two informal warnings were also issued to carriers and 12 informal warnings were issued after periodic facilities inspections.

Two warnings were issued by the Agency to Windsor International Airport for contraventions of the Personnel Training for the Assistance of Persons with Disabilities Regulations. Another warning was given to a small air carrier for advertising and issuing tickets for international flights for which the carrier did not hold appropriate licence authority under the *Canada Transportation Act*.

The four Notices of Violation were issued to air carriers operating publicly available air services without an appropriate Agency licence; and to a private lodge operator conducting an illegal air service by transporting guests to and from the lodge using a privately registered aircraft.

Communicating with Canadians

The Agency had 365 contacts with news media in 2003 regarding air matters, compared with 324 in 2002. Seven news releases and three background stories were provided on major air issues that the Agency dealt with in 2003.

The Air Travel Complaints Commissioner's call centre answered 7,818 calls during the year. Staff participated in five air travel trade shows across the country and the



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Commissioner held several consultations with airline executives and groups and associations representing consumers and travel agents.

A total of 30,696 copies of the Fly Smart booklet were distributed through the Air Travel Complaints Commissioner's call centre and trade shows during 2003. The 50-page booklet, with advice for air travellers, is also available on the Agency's Web site (www.cta.gc.ca).

CASES BEFORE THE COURTS

Federal Court – Trial Division – Cases Decided in 2003

MK Airlines Limited and Zeus Seafood Inc. v. Attorney General of Canada

Court File No.: T-1119-03

On November 7, 2003, the Court granted the application for a declaration that the all-cargo charter flights for which MK Airlines received Agency approval, met the definition of “fifth freedom” pursuant to section 2 of the Air Transportation Regulations.

Federal Court of Appeal – Cases Pending in 2003

Northwest Airlines, Inc. and KLM Royal Dutch Airlines v. Canadian Transportation Agency

Court File No.: A-407-03

Appeal of Agency Decision No. 232-A-2003, dated April 29, 2003, which directed Northwest Airlines, Inc. and KLM Royal Dutch Airlines to take certain corrective measures following the air carriers’ refusal to honour tickets issued by Travel Way Services Inc.

KLM Royal Dutch Airlines v. Canadian Transportation Agency and Ladan Raei

Court File No.: A-515-03

Appeal of Agency Decision No. LET-C-A-107-2003, dated May 8, 2003, and the Order made in Agency Decision No. LET-C-A-110-2003, dated May 9, 2003, as well as Order No. 2003-C-A-305, dated May 22, 2003, regarding a complaint arising out of KLM Royal Dutch Airlines’ refusal to transport Ms. Raei.

Petitions to the Governor-in-Council – Cases Decided in 2003

Petition to the Governor-in-Council in respect of a number of decisions made by the Agency approving certain all-cargo charter flights to be operated by MK Airlines Limited between Canada and Europe. On June 2, 2003, the Governor-in-Council rescinded the Agency Decision Nos. LET-A-94-2003, LET-A-118-2003 and 305-A-2003.

CHAPTER 3

MARINE TRANSPORTATION



CSTM/CN000225

THE BOARD OF TRANSPORT COMMISSIONERS assumed authority over inland waterways in 1938. That responsibility was transferred to the Canadian Maritime Commission in 1947. The Canadian Transport Commission centralized authority over marine matters in 1967, with jurisdiction over most water transportation matters and tariffs. This authority extended to coasting trade, St. Lawrence Seaway Authority tariffs and the administration of the Shipping Conference Exemptions Act. Though legislation was amended over time, similar authority has remained with the Canadian Transport Commission's successors. In 1972, the Canadian Transport Commission was empowered to hear complaints about tariff increases for Canada's four pilotage authorities. With the Canada Marine Act, 1998, which created new port authorities, commercialized the St. Lawrence Seaway and set up the Federal Bridge Corporation to manage federal bridges, the Canadian Transportation Agency assumed new duties.

The Agency exercises its marine mandate under the Coasting Trade Act, Canada Marine Act, Pilotage Act and the Shipping Conferences Exemption Act. In response to applications to use foreign vessels in Canadian waters, the Agency makes recommendations to the Minister of National Revenue on whether suitable Canadian vessels are available to perform the activity described in the application. When the activity entails the carriage of passengers by ship, the Agency must determine that an identical or similar adequate marine service is not available. The Agency also has the power to determine, in response to a complaint, whether tariffs, tolls and fees established by a port authority, the St. Lawrence Seaway Management Corporation, the Federal Bridge Corporation and the Pilotage Authorities are unjust, unreasonable, discriminatory or prejudicial to the public interest. The Agency administers the Shipping Conferences Exemption Act.



The Canadian Transportation Agency is committed to protecting the interests of Canadian marine operators and shippers, while ensuring that commercial marine activities are conducted fairly and efficiently in Canadian waters.



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Major issues in the marine sector that the Agency dealt with in 2003 included the publication of new guidelines for Coasting Trade Licence Applications; and its first complaint from tour boat operators that fees imposed by a port authority were unjustly discriminatory.

Coasting Trade Act

The *Coasting Trade Act* stipulates that the Minister of National Revenue cannot issue a coasting trade licence

authorizing a foreign ship to conduct a commercial activity in Canadian waters unless the Agency has determined that no suitable Canadian ship is available to perform the activity described in the application. If the coasting trade activity is for the transportation of passengers, the *Coasting Trade Act* requires the Agency to also determine whether an identical or similar adequate marine service is available.

The intent of the Act is primarily to protect the interests of owners and operators of Canadian vessels while also providing users of marine services access to an international fleet where suitable Canadian ships are not available to perform a commercial activity within Canadian waters.

In 2003, the Agency received a total of 107 coasting trade applications for the use of foreign vessels in Canadian waters, of which 10 were denied, nine were withdrawn and 87 were approved.

In April 2003, the Agency introduced draft guidelines for Coasting Trade Licence Applications after more than a year of consultations with the marine industry and interested parties. Following further consultations, the Agency issued finalized guidelines in August.

The new guidelines are intended to better meet the needs of all interested parties involved in the coasting trade process as well as those of the Agency, and to clarify each party's responsibilities in the application process.

As outlined in the guidelines, the applicant must provide all relevant information pertaining to the proposed activity and all the specific requirements for the work to be performed. In turn, a Canadian operator must provide in its pleadings all relevant information about how its offered vessel is capable of performing the activity described in the application. The guidelines also state that when an offer for a Canadian ship is filed in response to an application, the onus is on the applicant to demonstrate that the offered ship is not suitable and/or not available for the activity proposed in the application.

The guidelines describe what factors of suitability, availability and similar adequate marine service the Agency considers when processing an application. They also indicate that the Agency may hold an oral hearing if deemed necessary as part of its examination of an application. The new guidelines are posted in the Marine section of the Agency's Web site (www.cta.gc.ca).

In 2003, the Agency also compiled the results of a survey on the quality of its coasting trade services and client satisfaction. The survey found that clients were generally pleased with the Agency's application process. Work continued on a project to make the processing of coasting trade applications available electronically. The project awaits the resolution of a number of issues including electronic signature and the electronic filing of supporting material for the application.

In March 2003, the Agency received applications from TGS Nopec for two foreign seismic research and survey vessels to carry out a seismic survey program of an eight-month duration, in continental shelf waters off the east coast of Canada. During the course of the pleadings, the application for one of the proposed vessels was withdrawn as the vessel was being registered in Canada. After a Canadian registered vessel with equal or superior equipment was offered in response to the application, the Agency determined that there was a suitable Canadian registered vessel available.

In August 2003, TGS Nopec filed two new applications to use two other foreign seismic and survey vessels to carry

out the same data acquisition program over a period of four months. The Agency found that it had already determined that there was a suitable Canadian registered vessel available for the proposed activity, and decided not to consider the application. PF Collins, the broker for the applicant, was further informed that when the Agency has already decided on a matter, the proper venue for reconsideration of the decision is an application for review under Section 32 of the *Canada Transportation Act*.

TGS Nopec filed an application for review, alleging that there had been a change in the facts and circumstances since the decision was issued. However, the Agency decided that there were no new facts or circumstances to warrant a review.

On November 28, 2003, R&B Falcon Canada Co. filed an application to use a foreign drilling ship for an exploratory drilling program off the east coast of Nova Scotia between April 15, 2004 and December 31, 2004. On December 12, 2003, Ocean Rig AS indicated that a semi-submersible drilling rig would be registered in Canada and available for the proposed activity. Although some suitability and availability concerns were raised by the applicant, the key



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issue was whether the Agency could entertain an offer from an operator for a vessel that is not registered in Canada under the *Canada Shipping Act* at the time the vessel is offered. The Agency will issue a decision on the application in 2004.

Pilotage Act

According to the *Pilotage Act*, a qualified Canadian marine pilot must be on board most ships to navigate into or out of major Canadian ports and along some Canadian waterways designated as compulsory for pilotage. Four pilotage authorities (Atlantic, Laurentian, Great Lakes and Pacific) are responsible for providing pilotage services in their respective regions and they set the tariffs for these services. Any proposed change or increase in a tariff must be published in Part I of the *Canada Gazette*. Objections to tariff proposals must be filed with the Agency within 30 days of its publication date. Once an objection has been filed, the Agency must carry out an investigation of the proposed tariff and after examining operational, financial and commercial considerations, the Agency must determine if the tariff is in the public interest.

On July 26, 2003, the Laurentian Pilotage Authority (LPA) published a proposed tariff increase of 2.95 per cent. The marine industry told the LPA that it would object to any increase exceeding 2.5 per cent. The LPA revised its proposed increase and published a 2.5 per cent increase in Part II of the *Canada Gazette* on November 19, 2003.

The Atlantic Pilotage Authority published a tariff amendment on October 11, 2003, indicating that the planned rate increase in 2004 for the Strait of Canso would not be implemented.

The Great Lakes Pilotage Authority published three tariff amendments in 2003: an average 4.5 per cent tariff increase on May 10, 2003; a change in the currency equalization factor for pilotage services shared with U.S. pilots on July 26, 2003; and an average tariff increase of 8 per cent on November 22, 2003.

The Pacific Pilotage Authority published a tariff amendment on October 18, 2003, for an average tariff increase of 2 per cent. No objections were filed with the Agency against these tariff amendments.

In 2003, the Agency mediation program was able to assist a pilotage authority and a major group of users in resolving a dispute over proposed tariff increases published in the fall of 2002. Agency mediation meetings were scheduled for January 2003, but the two parties reached an agreement before the meetings.

Canada Marine Act

The *Canada Marine Act* governs the independent Canadian port authorities at 20 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 March 2003, Harlequin Cruises Inc. and several other tour boat operators in the Port of Toronto filed a complaint with the Agency alleging that the fees imposed by the Toronto Port Authority were unfair, too high and caused undue hardship. The applicants claimed that they had to pay for harbor maintenance services that they did not need or use. The Toronto Port Authority argued that its fees were fair and reasonable and were set at levels to allow it to operate on a self-sustaining basis.

The Agency examined the Authority's harbor maintenance fees within the context of the fee-setting powers of a port authority under the *Canada Marine Act* and determined that there was no unjust discrimination in the fees imposed on tour boat operators. The complaint was dismissed.

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. No complaints were filed in 2003.

The Federal Bridge Corporation manages a number of bridges 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. Complaints about fees set by a bridge corporation may be filed with the Agency. No complaints were filed in 2003.

The Minister of Transport tabled the report on the review of the *Canada Marine Act* in the House of Commons on June 4, 2003. The report contained a series of recommend-

ations and observations regarding Canada Port Authorities, public ports, the St. Lawrence Seaway, marine pilotage and ferry services. The Agency had participated in the review process by providing information to the Review Committee. At the end of 2003, the report recommendations were being evaluated by Transport Canada.

Shipping Conferences Exemption Act

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

Under the SCEA, a complaint may be filed with the Agency if a person believes that a conference agreement or an action by a member line reduces competition and results in an unreasonable increase in price or a reduction in service. No complaints were filed in 2003.

Communicating with Canadians

The Agency maintains frequent contact with the marine industry through consultations, by attending marine



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conferences, functions and workshops. The Agency regularly attends meetings hosted by the Association of Canadian Port Authorities and semi-annual meetings of the Canadian Marine Advisory Council.

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

CASES BEFORE THE COURTS

Federal Court of Appeal – Cases Discontinued in 2003

Westshore Terminals Limited v. Vancouver Port Authority

Court File No.: A-625-00

Appeal of Agency Decision No. 487-W-2000, dated July 20, 2000, made in the matter of an application by Westshore Terminals Limited for a determination of unjust discrimination in the fees fixed by the Vancouver Port Authority. Notice of Discontinuance filed May 1, 2003.

Federal Court Trial Division – Cases Pending in 2003

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.

CHAPTER 4

RAIL TRANSPORTATION



CSTM/CN000249

THE BOARD OF RAILWAY COMMISSIONERS WAS ESTABLISHED IN 1904 as an independent regulatory body with authority over railways. Since the 1850s, railways had been instrumental in Canada's development. Just as the railway built between Toronto and Montréal in 1856 helped lead Canada West and Canada East into Confederation, railways provided the impetus for other provinces and territories to join as well. In the early 20th century, Canada's economy depended on railways. The Railway Board regulated freight rates, fares and safety, among other things and, in its role as a quasi-judicial tribunal, settled railway disputes. The Board's powers were passed to its successors over the years, as railways increasingly faced competition from other modes of transportation and tougher economic realities. Railway legislation has evolved over time, but the Canadian Transportation Agency continues to have economic authority over railways.

The Agency's mandate in rail transportation ranges from the licensing and approval of new operations to 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 the discontinuance of service and disposal of assets of a railway line.



The Canadian railway industry played a leading role in North American freight transportation in 2003. Railways under federal jurisdiction were clearly focussed on keeping costs in check while working to attract customers through scheduling and route advantages.

The railways' success in cost-effectiveness was reflected in one of the proposed amendments to the Railway Interswitching Regulations, that is, a reduction in interswitching rates. The Canadian Transportation Agency published the proposed amendments to the Regulations in Part I of the *Canada Gazette* in 2003, as part of its statutory review. The amendments will be studied further in 2004 before they are finalized.



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The Agency noted an increase in the use of its mediation program to settle rail disputes in 2003. There were 21 cases in the Agency's mediation program during the year, 13 of which were new requests. The Agency is encouraged by this growing acceptance of mediation and will continue to promote it as a method of solving railway disputes.

The Agency also issued a decision on a railway's application for an interswitching order that included, as alternative remedies, a request for the granting of running rights and

a ruling that the railway failed to fulfil its common carrier obligations. The application, brought against Canadian National Railway Company (CN), involved the CN line where it intersects with New Brunswick Southern Railway Co. (NBSR) at the port of Saint John, New Brunswick. The Agency dismissed the application on August 14, 2003.

In 2003, a new Guide to Railway Charges for Crossing Maintenance and Construction was developed by the Agency. The Guide, designed to assist municipalities, railways and government officials, goes into effect on January 1, 2004. It is intended for use by Canadian federally regulated Class I railways when charging for work performed at crossings, crossing warning systems or for any crossing-related work.

The Agency granted a new certificate of fitness to the Prairie Alliance for the Future railway company, welcoming it into federal jurisdiction in 2003. It also cancelled the certificate of Acadian Railway Trains L.P., which no longer operates in Canada. Two other federal railway companies changed ownership.

An application by CN for an award of costs regarding the Ferroequus Railway Company's application for running rights was dismissed by the Agency in February 2003. The Agency found that since CN had not raised the issue of costs prior to the issuance of the Agency decision, its jurisdiction to award costs was spent.

In November 2003, CN announced that it would acquire the outstanding shares of BC Rail Ltd., along with the right to operate over BC Rail's roadbed under a long-term lease with the Government of British Columbia. The deal must be approved by the Competition Bureau. CN also indicated that it will apply to the Agency for a certificate of fitness for the BC Rail operations. If approved, this would add approximately 2,300 kilometres to the federal rail network and it would place numerous shippers, municipalities, landowners and railway users under federal transportation legislation, including the *Canada Transportation Act*.

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 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.

On November 8, 2003, the Agency published proposed amendments to the Regulations in Part I of the *Canada Gazette*. The amendments were drawn up after consultations with more than 200 interested parties, including railways, shipper associations, port authorities, provincial governments and federal government agencies. The proposal to amend interswitching rate levels, including a reduction in each category of rates, reflects a general decline in railway costs.

Several respondents in the consultations, mainly shipper associations and governments, noted the benefits of inter-switching and stressed the need for continued regulated interswitching. Most parties were in favour of the proposed reduction in the rates, although a few parties opposed it. Among other issues raised were the level of contribution toward fixed costs incorporated in the interswitching rates and the redefinition of car block sizes.

The Agency will continue consultations on these issues in 2004 and will consider all submissions as it finalizes the regulatory amendments. It is expected that the amended Railway Interswitching Regulations, including the new rates, will be published in Part II of the *Canada Gazette* in 2004.

In 2003, the Agency issued decisions on two applications for interswitching orders. In the first case, the Trustee of Canadian American Railroad Company (CDAC) had filed an application in 2002, seeking an order for CN to interswitch CDAC's traffic at the point where NBSR and CN join in the port of Saint John, NB.

On December 13, 2002, the Bangor and Aroostook System, an affiliate of CDAC, filed a reply in the proceeding, requesting that the application be extended to include running rights over CN's line at the port of Saint John and a level-of-service complaint concerning CN's refusal to grant the CDAC access to the potash terminal on CN's line at the port of Saint John. CN filed an objection requesting that the complaint be dismissed.

In January 2003, the Bangor and CDAC companies were acquired by Montreal, Maine & Atlantic Railway, Ltd. (MMA) and by Montreal, Maine & Atlantic Canada

Company (MMAC). The original application filed by CDAC and amended by Bangor, was then continued by MMA.

In addressing the request for an interswitching order, the Agency noted that the provisions of the Act require that, to be eligible for regulated interswitching, a connection must exist that conforms with the definition of an interchange which is “a place where the line of one railway company connects with the line of another railway company, and where loaded or empty cars may be stored until delivered or received by the other railway company”. Furthermore, the Agency noted that “railway company” is defined in the Act as a railway that is under the legislative authority of Parliament and that holds a certificate of fitness issued under Section 92 of the Act.

The Agency determined that, at the port of Saint John, CN, a federally regulated railway company, connects with NBSR, which is a provincially incorporated and operated railway company. In the absence of a connection between two federally regulated railway companies, the Agency decided that the point of connection between NBSR and CN did not fall within the definition of “interchange” set out in Section 111 of the Act. Therefore, the Agency dismissed the application.

An application filed by CN that requested the interswitching of traffic between CN and MMA at the junction of Ste-Rosalie, Québec, was withdrawn without conditions. The Agency issued a letter decision in that respect.

Running Rights

As noted in the section above, the Bangor and Aroostook System had, as an alternative remedy to the request for an interswitching order, made a request for running rights over CN’s line at the port of Saint John.

In reviewing the arguments filed in the running rights request, the Agency noted that the applicants failed to present any details on how they would exercise the running rights if they were granted. Similarly, the applicants did not file any arguments, indicating how the granting of running rights would be beneficial to the public interest. Furthermore, given that MMA (which had bought out CDAC and Bangor) did not have any operations in Saint John, the Agency found that the granting of running rights over the CN line from the connection in Saint John to the potash terminal in the port of Saint John would serve no useful purpose. The application was dismissed.

Level-of-Service

The Bangor and Aroostook System also requested as a second alternative to the interswitching order that the application be extended to include a level-of-service complaint concerning CN's refusal to grant CDAC access to the potash terminal on CN's line at the port of Saint John.

With respect to CN's conduct in handling the traffic, the Agency, in dismissing the main application for an interswitching order, had determined that regulated interswitching does not apply in Saint John and, consequently, CN was under no statutory obligation to perform interswitching at Saint John at the rates prescribed by the Railway Interswitching Regulations. Regarding the allegation that CN refused to accept liability for the train, the Agency noted that no evidence had been filed that such a decision was made.

The Agency concluded that there was no evidence that CN had breached its common carrier obligation to provide adequate service. It was also noted that the facts surrounding MMA's application for a level-of-service complaint arose at a time when CDAC was the affected railway company. Given that MMA had only acquired the assets of the former CDAC railway company, the Agency questioned the right of

MMA to file such a level-of-service complaint. Therefore, the level-of-service complaint was dismissed.

A level-of-service complaint filed in November 2002 by Novell Polymers Inc., alleging that CN had failed to fulfil its common carrier obligations by refusing to scale hopper cars for the carriage of plastic raw materials, was withdrawn without conditions in January 2003.

Another level-of-service complaint against Canadian Pacific Railway Company (CPR) was filed with the Agency by a group of grain producers in December 2003. The Agency will render its decision in that case in 2004.

Award of Costs

On November 1, 2002, CN filed an application for an award of costs regarding a running rights application filed by Ferroequeus Railway Company Limited on October 25, 2001.

Feroequeus had requested running rights over CN's lines from interchanges with CPR at Lloydminster, SK, and Camrose, AB, to Prince Rupert, BC. It had previously filed a running rights application with the Agency for a much larger distance, but that application had been dismissed. The October 25, 2001, application was later amended to

delete references to Lloydminster and CPR's holdings at Camrose. The Agency issued a decision on the Ferroequus case on September 10, 2002, denying the application on the grounds that no public interest would be served by granting the running rights.

In seeking the award of costs, CN expressed an opinion that the proceeding leading to the 2002 decision constituted special and exceptional circumstances that justified an award of costs. On February 28, 2003, the Agency dismissed CN's application, ruling that the Agency decision made in 2002 was final and that costs were neither requested nor awarded at that time. The Agency also determined that the Ferroequus application, though complex, was not vexatious or frivolous.

Ferroequus had appealed the Agency's September 10, 2002, decision to the Federal Court of Appeal. On November 26, 2003, the Federal Court of Appeal dismissed the appeal.

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, which is a confidential method of settling a

matter through an independent arbitrator or a panel of three arbitrators.

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

Subsection 163(1) of the Act mandates that in the absence of an agreement between the arbitrator and the parties as to the procedure to be followed, a final offer arbitration shall be governed by rules of procedure made by the Agency. In developing rules, the Agency has consulted widely with industry representatives, including past participants of final offer arbitration. Comments gleaned from these consultations formed the basis of proposed procedural guidelines, which the Agency then forwarded to interested parties. The resulting 18 submissions containing recommendations were used by the Agency to develop a draft set of rules of procedure.



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In the fall of 2003, further discussions were held with legal counsel, representatives of shippers, Class I railway companies and arbitrators, all of whom had recently been parties to a final offer arbitration. The purpose of these

meetings was to provide the Agency with more insight into the process and to discuss any problems the parties may have experienced. As a result, the rules were amended and a second industry-wide consultation was undertaken.

The Agency also has developed a set of Rules of Ethics for Prospective Arbitrators. The Agency-endorsed rules of ethics are intended to provide guidance to potential arbitrators and to establish appropriate standards of impartiality, independence, competence, diligence and discretion for arbitrators working under Part IV of the Act.

These rules, along with the Procedural Rules for the Conduct of Final Offer Arbitration, were forwarded to all federally regulated railways, shipper associations, legal counsel for shippers, the arbitrators on the Agency's list of arbitrators and to other interested parties for their input in 2003. The Agency expects that both sets of rules will be available on the Agency's Web site in the spring of 2004.

Section 169 of the Act requires the Agency to maintain a list of individuals willing to act as arbitrators, and to specify each arbitrator's particular expertise. In 2003, the Agency contacted 123 arbitrators to verify their willingness to remain on the Agency list and to update relevant

information. In November 2003, the Agency published an amended list of 40 arbitrators, including information about their areas of expertise. This list is available on the Agency's Web site (www.cta.gc.ca).

In 2003, the Agency received one request for final offer arbitration. The request was processed and the case was arbitrated successfully. A forest products shipper also gave notice of intent to arbitrate but, by the end of 2003, the matter had not been pursued.

Since the enactment of the *Canada Transportation Act* in 1996, the Agency has received more than 20 notices from shippers of their intention to submit their disputes to final offer arbitration. About half of those cases were withdrawn or settled prior to arbitration.

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 suspend or cancel a certificate.

In 2003, the Agency granted one new certificate of fitness to the Prairie Alliance for the Future Inc., for a railway operating in the Province of Saskatchewan, through a lease agreement with CN. The proposed operations would be between Denholm and Speers Junction; Speers Junction and Glaslyn; England and Spiritwood; North Battleford Junction and St. Walburg; and Spruce Lake Junction and Paradise Hill, totalling 210.52 miles.

The Agency made four amendments to certificates of fitness in 2003. The certificate of fitness issued to Montreal, Maine & Atlantic Railway, Ltd. and the Montreal, Maine & Atlantic Canada Company was amended three times to reflect:

- a) a name change from Montreal, Maine & Atlantic Canada Company to Montreal, Maine & Atlantic Canada Co.;
- b) a change in operations since the Montreal, Maine & Atlantic Railway, Ltd. no longer operated by virtue of a running right with CN and CPR between Saint-Léonard and Grand Falls, NB; and
- c) to allow Montreal, Maine & Atlantic Canada Co. to operate a special one-time regional passenger service train for a period of one week in the month of August.

The certificate of fitness issued to RailLink Canada Ltd. was also amended to reflect a change in its operations related

to the 2002 discontinuance of auxiliary trackage on the CN's Burford Spur and TH&B Spur of the Hagersville Subdivision in southern Ontario.

In addition, the Agency cancelled three certificates of fitness in 2003. The two certificates for the Bangor and Aroostook Railroad Company and its wholly-owned subsidiary, the Van Buren Bridge Company, and the Canadian American Railroad Company were cancelled as these companies had been acquired by the Montreal, Maine & Atlantic Railway, Ltd. and the Montreal, Maine & Atlantic Canada Co. The Agency cancelled the certificate of fitness for the Acadian Railway Trains L.P. after being informed that the company had cancelled its railway operations in Canada.

In 2004, the Agency anticipates a CN application to vary its certificate of fitness in light of its recent agreement with the Government of British Columbia to lease and operate BC Rail.

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 2003, the Agency developed a plan for the environmental assessment of the Detroit River Tunnel Partnership project, to be built between Windsor, Ontario, and Detroit, Michigan. The Agency formed an interdepartmental screening committee, which includes representatives from 15 federal departments and agencies, as well as two ministries of the Ontario Government. In 2004, the Agency will release a draft project scoping document and solicit input from the various agencies on issues that need to be addressed in the assessment.

The Agency made one environmental screening decision in 2003, allowing the project to proceed when assured that the applicant took measures deemed by the Agency to be appropriate to mitigate any significant adverse environmental impacts.

The Agency continued screening the proposed relocation of part of the CPR Coutts Subdivision in Alberta near Milk

River and the St. Albert bypass, as well as monitoring environmental compliance for previously approved rail line construction projects in Edmonton and Prentiss, AB. In response to inquiries, the Agency also established a number of monitoring programs for major construction proposals including: a CN intermodal terminal near Milton, ON; a rail link to Toronto's Pearson Airport; a rail relocation project at Front Street in downtown Toronto; a power line near Sumas, BC; and the twinning of Highway 69 in Ontario.

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 2003, the Agency reached decisions in two disputes about road crossings of railways, one dispute over three utility crossings, and two disputes about private railway crossings. In 2003, the Federal Court of Appeal dismissed an appeal of an earlier Agency decision concerning a private crossing. The Agency also received 184 agreements filed by parties who had conducted their own negotiations related to railway crossings. The Agency may also issue decisions apportioning costs among railways and other parties for railway

protective devices, such as crossing signals or fencing along rights of way. The Agency's jurisdiction to apportion such costs in a fencing dispute near Montréal was upheld by the Federal Court of Appeal in 2003. The Agency also completed 59 reviews of existing orders or decisions, primarily related to road crossings, where relevant facts or circumstances had changed. In most cases, legal responsibility for roads and road crossings had been transferred from one government to another. The Minister of Transport and the Province of Ontario had previously agreed that the federal railway crossing laws apply to railways under Ontario provincial jurisdiction, and that the Agency should administer those laws. The Agency has had preliminary discussions with three other provinces to enter into similar agreements.

Railway Charges for Crossing Maintenance and Construction

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



A Kink in the Links

ClubLink Corporation planned to construct a bridge over CN tracks at Halton Hills, Ontario, to link two portions of a property on which it was building a golf course. ClubLink filed an application with the Agency, seeking a private crossing to be paid for by CN. ClubLink argued that, under existing legislation, a railway must pay for a private crossing when the construction of a railway has divided the land. However, the Agency ruled that this obligation did not exist prior to the original *Railway Act* of 1888 and, since CN had divided the land in 1877, it could not be held responsible for the costs.



In 2003, the Agency completed its review of the existing guideline, titled Schedule "A" Directives, and replaced it with a new guideline called a Guide to Railway Charges for Crossing Maintenance and Construction. This guide, effective January 1, 2004, is intended for use by Canadian federally regulated Class I railways when charging for construction or maintenance work performed at crossings, crossing warning systems or for any other crossing-related work, either agreed to by the parties or authorized by an order of the Agency.

In 2004, the Agency will continue to assess the feasibility of developing a similar guide to assist parties for work performed by federally regulated short-line railways (non-Class I).

Transfer and Discontinuance

Railways may rationalize their lines without regulatory approval if they follow the process prescribed in Division V, Part III of the Act. 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.

The Agency may also be asked to determine whether a railway company has complied with the transfer and discontinuance process. As a result, the Agency may be asked to determine whether a specific piece of track is subject to the prescribed process.

On February 18, 2003, the Agency issued a decision in response to an application made by Burlington Northern (Manitoba) Limited to determine whether an unused piece of trackage, designated as the Pacific Avenue Spur, in the City of Winnipeg, constituted a yard track, siding, spur, or other track auxiliary to a railway line, under Subsection 140(2) of the Act. The Agency decided the trackage in question was a spur, and therefore could be removed without being subject to the prescribed process of discontinuance under the Act.

Although the Agency was not notified of any discontinuances in 2003, the Agency did receive notice that CPR intended to proceed with the discontinuance of the Marpole Spur in Vancouver, frequently referred to as the Arbutus Corridor.

The following acquisitions and transfers occurred during the year:

- Montreal, Maine & Atlantic Railway, Ltd. and the Montreal, Maine & Atlantic Canada Company acquired the assets of the Bangor and Aroostook Railroad Company and its wholly-owned subsidiary, the Van Buren Bridge Company, and the Canadian American Railroad Company in order to continue the operation of these railways in Canada.
- 210.52 miles of CN trackage in the Province of Saskatchewan was transferred to Prairie Alliance for the Future Inc. through a lease agreement for continued railway operation.
- CPR sold the Edmundston Spur from Grand Falls to Cyr Junction, NB, to CN, a total of 7.8 miles.

Western Grain Revenue Caps and Revenue

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

On December 29, 2003, the Agency ruled that CN and CPR revenues for the movement of Western grain did not exceed the revenue caps for the crop year 2002–03. CN’s grain revenue of \$175.6 million was \$17.3 million below its revenue cap of \$193 million, while CPR’s Western grain revenue of \$226 million was \$6.6 million below its revenue cap of \$232.6 million.

In March 2001, the Agency made a ruling on what constitutes grain revenue for the purpose of the Agency’s Western grain railway revenue determinations under the revenue cap regime. Included in the determination was a finding in respect of CN’s demurrage policy. The Agency also issued a decision in December 2001 on CPR’s new grain port demurrage rules, that is, the penalty charges imposed on shippers for inefficient activities at port. These rules may affect grain revenues.

In its decision relating to CPR’s new grain demurrage policy, the Agency found that it was unreasonable to characterize a portion of the amount earned by CPR, as a result of these new rules, to be demurrage. Consequently, a portion of the amount earned from demurrage was to be included in the calculation of the revenue cap. CPR appealed the Agency’s demurrage decision. The appeal was upheld by the Federal

Court of Appeal in a June 2003 decision, which directed the Agency to redetermine the matter. In redetermining the matter, the Agency found that no portion of the money collected by CPR for grain port demurrage should be deemed to be grain revenue in either of the two crop years 2000–2001 or 2001–2002. The grain revenue for both years was therefore adjusted.

As a result of the Federal Court ruling, CN requested that the Agency amend its 2001 decision in respect of its own demurrage policy and determine that no portion of its revenue collected for grain port demurrage, for crop year 2002–03, be deemed as revenue under the revenue cap. The Agency maintained its 2001 ruling and deemed it appropriate to include a portion of CN’s grain port demurrage charges as revenue under the revenue cap regime for 2002–03. The Agency found that one of CN’s terms and conditions — starting the demurrage clock immediately upon placement of rail cars at port for unloading rather than at midnight of the day of placement — resulted in CN’s program falling outside the definition of demurrage. As a result, the Agency found that the amount that CN collected as grain port demurrage for crop year 2002–2003 cannot all be characterized as being in respect of demurrage.

In April 2003, the Agency announced a year-over-year decrease of 2.4 per cent in the Volume-Related Composite Price Index for the movement of Western grain for crop year 2003–04. 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 2003, Agency staff assisted 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.

The Agency continued to assist Government of Canada departments in responding to the U.S. Department of Commerce's investigation of the North Dakota Wheat Commission's petition for a countervail duty on Canadian wheat exports to the United States. The Agency's analysis of similar grain traffic movements under the revenue cap regime versus non-revenue cap movements was used in the U.S. Department of Commerce's finding. That finding was upheld in the U.S. International Trade Administration ruling that the revenue cap regime is not a countervailable subsidy.

In 2003, the Agency also assisted Government of Canada departments in responding to the U.S. Trade Representative's petition to the World Trade Organization (WTO), under Article XXII of the General Agreement on Tariffs and Trade, 1994, on the export of wheat by the Canadian Wheat Board and Canada's treatment of imported grain. Agency staff provided expert advice to the Canadian delegation team at two WTO hearings in Geneva. The WTO is expected to rule on the U.S. complaint in early 2004.

Cost-of-Capital

In early 2003, 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 2003–04, are 9.96 per cent and 10.09 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 September 2003, the Agency initiated a dialogue with CN, CPR and other interested parties on recurring issues raised by the railways regarding the Agency's estimate of cost-of-common-equity rates. The main issues under review are the appropriateness of financial models to be used in estimating the cost-of-common-equity and the source of relevant data as required inputs to the various models. The Agency will render its decision in 2004.

Net Salvage Value Determinations

Section 143 of the Act requires railway companies to advertise the availability of railway lines for continued operation before discontinuing them. Parties are free to negotiate an acceptable sale price. However, any party to the negotiation for transfer of a line can ask the Agency to set the net salvage value of the line for continued oper-

ation. 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. Governments may use the line for any purpose after taking possession.

In November 2002, the Nova Scotia Utility and Review Board granted an application from the Cape Breton and Central Nova Scotia Railway to discontinue service and abandon a portion of the Sydney Subdivision, pursuant to the Province of Nova Scotia's *Railways Act*, 1993. The Province of Nova Scotia asked the Agency to determine the net salvage value of the line. The Agency completed its report for the Province in early 2003. Subsequently, the Province co-ordinated an agreement that would provide for increased traffic on the line. As part of the agreement, the Cape Breton and Central Nova Scotia Railway withdrew its discontinuance and abandonment plans.

In April 2002, the Hudson Bay Railway Company, a wholly owned subsidiary of OmniTRAX Canada, Inc., indicated, in its three-year rail network plan, its intention to discontinue service of its Sherridon Subdivision. The rail line provides



©VIA Rail Canada

the only all-weather surface access to the Mathias Colomb Cree Nation at Pukatawagan, in northern Manitoba. The Hudson Bay Railway Company provides freight service to Pukatawagan, and also passenger service under contract with VIA Rail. In January 2003, the Mathias Colomb Cree Nation expressed interest in buying the line and asked Indian and Northern Affairs Canada for funding to buy the rail line. The Government of Canada department said that

it would support a study to prepare a business plan for a rail service on the line, but its funding programs required the Mathias Colomb Cree Nation to find other partners for the project.

The Government of Manitoba's Department of Transportation and Government Services offered to contribute to the business plan study in part by contracting with the Agency for a determination of the net salvage value of the rail line. Indian and Northern Affairs Canada agreed to accept this contract as part of Manitoba's contribution to the study. OmniTRAX Canada, Inc. agreed to co-operate with the Agency in its determination of the net salvage value. The Agency completed its report for the Province of Manitoba by the end of July.

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 is reviewed and approved by the Agency. It is used in a variety of applications, such as adjudicating rail service and rate disputes; in setting interswitching rates under the Railway Interswitching Regulations; in determining overhead used for charges in the construction and the maintenance

of railway crossing protection at railway crossings and, in estimating the impact of possible changes in transportation policy as well as other related regulatory activities.

As part of the process of setting interswitching rates, the Agency makes visits to railway yards to review interswitching operations. Each year, the Agency visits different yards to ensure that the rates reflect the cost of interswitching traffic at all locations across Canada. In 2003, the Agency visited rail yards in Vancouver, Edmonton, Moose Jaw, Winnipeg, Montréal and Québec City.

Historical Price Indices

The Agency develops indices to measure the change in the prices of labour, fuel and material for CN and for 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 2003, the Agency dealt with 21 mediation cases regarding rail disputes. Of those, 13 were new requests and eight were continued from the previous year. Of the

21 cases, six were mediated successfully, four were resolved during pre-mediation and four cases were pending at the end of the year. Of the remaining seven cases, one was withdrawn, one was not accepted because of jurisdictional issues, and five did not proceed because the respondents declined to mediate.

The Agency observed increased opportunities to use mediation in the rail sector in 2003, as this method of dispute resolution became more widely accepted among users and carriers. Participants in the mediation program included a major municipality, a provincial utility, two provincial ministries and various private businesses and transportation providers. Issues ranged from infrastructure and noise disputes to level-of-service problems and rates.

The Agency continued its efforts to inform interested parties about mediation as an option in dispute resolution, through targeted advertising and publications. In addition, several meetings were held with users and carriers to discuss when and how mediation could be effective in dealing with some specific areas of chronic conflict.

Communicating with Canadians

In its continued commitment to inform and consult the railway industry and its users, the Agency carried on a wide variety of communication activities in 2003.

The Agency responded to over 350 inquiries and requests for information from various parties in the rail industry. Most of these queries were related to the existing provisions of the Act, namely, the competitive access provisions, such as level-of-service, interswitching and final offer arbitration, railway crossing agreements and disputes, certificates of fitness, transfer and discontinuance and western grain revenue cap.

A number of 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.

Formal consultations about the Railway Interswitching Regulations, the Procedures for the Conduct of Final Offer Arbitration and the Rules of Ethics for Prospective Arbitrators were conducted with railways, shippers, provincial governments, Government of Canada departments, municipalities and other interested parties. There were

also formal consultations regarding maintenance rates and charges for railway work at road/rail crossings, and railway noise and proximity issues.

A new Guide on Railway Charges for Crossing Maintenance and Construction was published by the Agency in 2003. It is available in print form or can be downloaded from the Agency's Web site (www.cta.gc.ca).

Early in 2003, the Agency was approached by the Canadian Grain Commission regarding the provisions of the Act in relation to grain producers loading producer cars. In March and April, Agency staff gave presentations in Saskatchewan to a diverse audience of grain transportation industry stakeholders regarding level-of-service provisions, final offer arbitration and the Agency's mediation services. Discussions continued with representatives of federal and provincial government agencies, shippers and railways, including short-line railway companies. An advisory committee was formed to produce a Best Practices Guide for Producer Car Loading. Agency staff was asked to provide information to the committee on dispute-resolution mechanisms available under the current legislation. It is expected that the Best Practices Guide for Producer Car Loading will be released in 2004.



CN operates approximately 1,500 locomotives and 61,500 freight cars. Locomotives in Symington Yard, Winnipeg, Manitoba.

©Canadian National Railway Company

Agency staff also met with Government of Québec officials to discuss the manner and conditions under which short lines or tourist trains could operate on the network of a federal railway.

The Agency continued to carry on information exchanges in 2003 with railway carriers and shippers' organizations, including the Canadian Fertilizer Institute, the Canadian Canola Growers Association, the Western Transportation Advisory Council, the Canadian Industrial Transportation Association, the Saskatchewan Association of Rural Municipalities and the Council of Forest Industries. The Agency provided information about its mandate and responsibilities, and explained current legislative and regulatory provisions for transportation services in Canada.

Formal presentations were made to visiting railway delegations from China, the Philippines and Russia, and to the Ontario Good Roads Association.

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

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

CASES BEFORE THE COURTS

Federal Court of Appeal – Cases Decided in 2003

Real Fafard et Jacques Borduas v. Canadian National Railway Company, Ville de St-Basile-Le-Grand and Transport Canada

Court File No.: A-374-01

Appeal of Agency Decision No. 18-R-2001, dated January 12, 2001, made in the matter of an application by Real Fafard and Jacques Borduas pursuant to Section 103 of the *Canada Transportation Act* to construct and maintain a private level crossing in the town of St-Basile-le-Grand, in the Province of Québec. On June 3, 2003, the Federal Court of Appeal dismissed the appeal.

Ville de Montréal v. Canadian Pacific Railway Company

Court File No.: A-608-01

Application for judicial review of Agency Decision No. 499-R-2001, dated September 21, 2001, regarding an application for a determination of the apportionment of costs for the construction and future maintenance of a fence along a railway track in the City of Montréal, in the province of Québec. On

February 27, 2003, the Federal Court of Appeal determined that it did not have the jurisdiction to deal with a direct judicial review application. On April 8, 2003, the Federal Court of Appeal denied the City of Montréal's application for an extension of time to seek leave to appeal Agency Decision No. 499-R-2001.

Canadian Pacific Railway Company v. Canadian Transportation Agency

Court File No.: A-193-02

Appeal of Agency Decision No. 664-R-2001, dated December 21, 2001, wherein the Agency determined that it had jurisdiction to examine the reasonableness of the revenue amount charges by a railway under a demurrage program. On June 23, 2003, the Federal Court of Appeal quashed the Agency's decision and ordered a redetermination.

Ferroequus Railway Company v. Canadian National Railway Company and the Canadian Transportation Agency

Court File No.: A-89-03

Appeal of Agency Decision No. 505-R-2002, dated September 10, 2002, made in the matter of an application to the Agency for an

order granting Ferroequus the right to run and operate its trains on and over specified lines of CN and for an order varying Ferroequus's certificate of fitness in accordance with the requested running rights. On November 26, 2003, the Federal Court of Appeal dismissed the appeal.

Federal Court of Appeal – Cases Pending in 2003

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

Court File No.: 03-A-45

Application for leave to appeal 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 10, 2003, the Federal Court of Appeal granted leave to appeal.

Petitions to the Governor in Council – Cases Pending in 2003

Village of Stenen v. Canadian Transportation Agency

Petition to the Governor-in-Council regarding Agency Decision No. 703-R-2000, dated February 15, 2000, which dismissed the complaint of the Mayor of Stenen, Saskatchewan, against the Canadian National Railway Company for removing a siding.

Canada's Federal Railway Companies as of December 31, 2003

3986250 Canada Inc.	Ferroequus Railway Company Limited	Ottawa Central Railway Inc.
Algoma Central Railway Inc.	Goderich-Exeter Railway Company Limited	Pacific and Arctic Railway and Navigation
Arnaud Railway Company	Hudson Bay Railway Company	Company/British Columbia Yukon Railway
Burlington Northern and Santa Fe Railway	International Bridge and Terminal Company	Company/British Yukon Railway Company
Company (Burlington Northern [Manitoba]	Kelowna Pacific Railway Ltd.	Limited carrying on business as or
Ltd. and Burlington Northern and Santa Fe	Maine Central Railroad Company and	proposing to carry on business as White
Manitoba, Inc.)	Springfield Terminal Railway Company	Pass & Yukon Route
Canadian National Railway Company	Minnesota, Dakota & Western	Prairie Alliance for the Future Inc.
Canadian Pacific Railway Company	Railway Company	Quebec North Shore & Labrador Railway
Capital Railway	Montreal, Maine & Atlantic Railway, Ltd. and	Company RaiLink Canada Ltd.
Chemin de fer de la Matapédia et	Montreal, Maine & Atlantic Canada Co.	St. Lawrence & Atlantic Railroad (Québec) Inc.
du Golfe Inc.	National Railroad Passenger Corporation	Sault Ste. Marie Bridge Company
CSX Transportation Inc. (Lake Erie and	(Amtrak)	Toronto Terminals Railway Company Limited
Detroit River Railway Company Limited)	Nipissing Central Railway Company	Union Pacific Railroad Company
Eastern Maine Railway Company	Norfolk Southern Railway Company	VIA Rail Canada Inc.
Essex Terminal Railway Company	Okanagan Valley Railway Company	Wabush Lake Railway Company, Limited

CHAPTER 5

ASSESSMENT OF THE ACT



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1904	Board of Railway Commissioners	1938	The Board of Transport Commissioners	1967	The Canadian Transport Commission	1988	The National Transportation Agency	1996	The Canadian Transportation Agency	2004	
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It is the responsibility of the Canadian Transportation Agency to prepare an annual assessment of the operation of the Canada Transportation Act. Bill C-26, an Act to amend the Canada Transportation Act, passed its first reading in February 2003. The Agency had been consulted extensively in the preparation of this legislation. However, Bill C-26 did not receive Royal Assent before Parliament was prorogued in November. The Agency awaits with interest further government action regarding this Bill.



RAIL TRANSPORTATION

Concerns about the *Canada Transportation Act* that have been raised in previous years continue to be noted by the Agency. Few new issues regarding the Act were observed in 2003. Provisions governing interswitching, the competitive line rate and the final offer arbitration process are among the concerns mentioned in previous years.

Some of these issues were addressed through the Agency's review of the Railway Interswitching Regulations and the consultations regarding the proposed Procedures for the Conduct of Final Offer Arbitration and the Rules of Ethics for Prospective Arbitrators. The vast majority of respondents

to the Interswitching Regulations remarked on the benefits of interswitching provisions and stressed the need for continued regulated interswitching in the railway network.

Other concerns regarding the competitive line rate provisions can only be addressed by legislative review of the Act.

Certificates of Fitness

The Act provides little guidance or restriction on structuring an organization to either come under, or avoid, 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.

The result is that there are no means to ensure that a new short-line carrier is operating under the proper jurisdiction; that shippers and consumers have all the rights accruing to them; that adequate liability insurance protects shippers and consumers; or that 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 requirement for a notice of impending transfer, which would allow affected parties located on a line to prepare for the effects of changes in railway operations;
- the possibility that there may be no continuation of rights for shippers and governments once a railway leaves federal jurisdiction;
- the lack of requirement for evidence of transfer to ensure

that railway lines transferred without advertisement will continue to operate;

- the short time frames for governments to decide whether to buy a railway offered for transfer;
- the requirement that a government must accept a railway's offer to transfer a railway line before the government can ask the Agency to determine the price or net salvage value (Subsection 145(5) only);
- the lack of any standard for negotiations between railways and governments on net salvage value and other aspects of a transfer (Section 145 only); 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.

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

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

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

- determine the regulatory consequences of the termination of a lease by either party including the eligibility of former grain-dependent branch lines for compensation for discontinuance; 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
- 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 and Pollution

Under existing Government of Canada transportation legislation, as clarified by a decision of the Federal Court of Appeal, the only dispute-resolution mechanism available to parties affected by noise, vibration and pollution caused by day-to-day railway operations is the civil courts. Bill C-26 had included a proposal to allow the Agency to address noise issues by providing the authority to publish guidelines and to order any reasonable changes in railway construction or operations to keep noise to a minimum.

AIR TRANSPORTATION

Pricing

The Agency has the temporary authority, until July 5, 2004, to make findings about unreasonable pricing on non-competitive routes within Canada on its own motion, with no requirement for a formal complaint, under Subsection

66(6) of the Act. The Agency's own-motion authority under Subsection 66(6) will terminate on July 5, 2004. Over the past three years, Agency staff, in discussions with people who have contacted them on domestic air carrier pricing matters, has found that individuals with concerns about specific air carrier pricing matters have been unwilling to file a formal pricing complaint with the Agency due to the complexity and nature of the formal complaint process. If the Agency were given a permanent authority to determine, on its own motion, that fares and rates on non-competitive domestic air routes are unreasonable, it would be able to investigate allegations of unreasonable domestic airline pricing on such routes in order to determine the validity of the allegations. This in turn would enable the government to intervene on a more timely basis in those cases where a carrier is suspected of abusing its dominant position.

Subsection 66(7) of the Act permits the Agency 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. Due to the wording of this subsection, it will expire at the same time as the Agency's own motion authority. This could make it difficult for the Agency to obtain information needed to make its determinations. This would be remedied if the references

to subsection 66(6) in subsection 66(7) was deleted. The wording of Section 66(3) of the Act has led to problems in the Agency obtaining relevant information needed to make its 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 in reaching its conclusions 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.

Domestic Tariffs

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

The travelling public, travel agents and other carriers are often unwilling to file a formal complaint because of the time involved, potential expense or the fear that a complaint could jeopardize commercial relationships. There have also

been instances where, in the absence of a complaint, the Agency has been unable to prevent a carrier from taking potentially unreasonable action. This problem could be remedied if the Agency were given own-motion authority in this area.

Advertising Air Fares

The Agency is concerned that advertised air fares often represent only a fraction of the total cost of air travel.

Fuel and insurance surcharges, airport improvement fees, the Air Travellers' Security Charge, and applicable taxes, which are all part of the cost of a ticket, are often not included in the advertised price. In 2003 a number of advertisements displayed only the one-way or "each-way" fare, while in the fine print it was noted that only return travel could be purchased.

Although such pricing practices do not contravene *Canada's Competition Act*, requiring greater transparency in advertising air fares would help consumers to understand the true price of a ticket and to be able to compare prices between carriers.

Tariff Information on Ticket Web Sites

Airline tariffs contain important information for passengers, including the terms and conditions of carriage.

The *Canada Transportation Act* requires domestic air carriers to make a copy of their tariffs available for public inspection at their business offices. The Air Transportation Regulations require international carriers to post a sign in their business offices indicating that their tariffs are available for inspection. International carriers are also required to keep a copy of their tariffs for public inspection in their business offices or where tickets are sold (except travel agencies).

The Agency is concerned that there is no explicit 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.

CHAPTER 6

THE AGENCY TEAM



RODERICK KERR
Commissioner
Oct 6, 1958 - Nov 8, 1958
Assistant Chief Commissioner
Nov 8, 1958 - Dec 31, 1958
Chief Commissioner
Jan 1, 1959 - 1967
Board of Railway Commissioners
and Transport Commissioners



JOSEPH LOUIS G RALD MORISSET
Member
Jan 1955 - Aug 4, 1965
Chairman
Aug 4, 1965 - Sept 20, 1967
Air Transport Board



ANNE HARLEY SEDGEWICK CARVER
Member
Jan 28, 1972 - 1979
Canadian Transport Commission



EDWARD HENRY LABORDE
Member
Aug 21, 1973 - Jan 6, 1981
Canadian Transport Commission

THE BOARD OF RAILWAY COMMISSIONERS BEGAN IN 1904 with three Commissioners, 18 employees and one cook. By 1908, with an expanding workload, Board membership was increased to six with a staff of 46 employees and one cook. In 1938, the Board of Transport Commissioners had six Commissioners, with expanded powers over airlines and marine matters. In the next few years, separate boards assumed responsibility for airlines and marine matters. The Canadian Transport Commission was created in 1967 to have authority over all federal transportation, with 17 commissioners and a staff that grew to more than 800. In 1988, the National Transportation Agency, with a maximum of nine Members, was established to implement a transportation policy of less regulation. By 1993, Agency staff was reduced to 500. In 1996, the Canadian Transportation Agency was created with a staff further reduced by half, and a maximum of seven full-time and three part-time Members.

THE AGENCY TEAM

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

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

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, 2003, there were six permanent Members, including the Chairman, who is also its Chief Executive Officer, and the Vice-Chairman, and two temporary Members, including the Air Travel Complaints Commissioner.

When a case is received by the Agency, the Chairman appoints a panel of Members to hear the case. If a request for mediation is received, the Chairman is responsible for appointing mediators. In addition to being the Chief Executive Officer of the Agency, the Chairman is also a Member. As a Member, she exercises her quasi-judicial responsibilities by sitting on panels hearing the wide variety of matters that are before the Agency.

The Chairman, as Chief Executive Officer, oversees all aspects of the administration and operation of the Agency. She is required to play an active role in allocating resources (both financial and staff), responding to government priorities and improving the organizational

effectiveness of the Agency. As CEO, she also chairs the Agency's Executive Committee and is responsible for setting the strategic direction and priorities of the organization.

A staff of about 280 employees provides operational support and assists the Members in their decision-making process.

What We Do

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

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

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

The Air and Accessible Transportation Branch processes licences and charter permit applications from Canadian and foreign air carriers, and is involved in enforcing Agency licensing requirements. It helps negotiate and implement international air agreements, administers international air tariffs, and deals with appeals of Nav Canada user charges.

This branch also provides support to the Office of the Air Travel Complaints Commissioner, established in 2000, which handles air travel complaints by consumers.

CANADIAN TRANSPORTATION AGENCY 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



Mary-Jane Bennett

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



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



Richard Cashin

Member
Born in: St. John's, NL
Lawyer and past president and founder
of Newfoundland Fishermen's Union
Appointed July 1, 1996–June 30, 2003



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

CANADIAN TRANSPORTATION AGENCY MEMBERS



Keith Penner

Member
Born in: Leask, SK
Former Member of Parliament from
Northern Ontario and National
Transportation Agency Member
Appointed July 1, 1996–June 30, 2003



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



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



Liette Lacroix Kenniff

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



Michael A. Sutton

Member
Born in: Salisbury, England
Former chairman of the
City of Toronto Planning Board
and telecommunications executive
Appointed December 22, 1997

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

The Rail and Marine Branch deals with rate and service complaints in the rail and marine industries, as well as disputes between railway companies and third parties in railway infrastructure matters. It processes applications for certificates of fitness for the proposed construction and operation of railways, and provides technical advice and recommendations to Members concerning railway inter-switching rates. Railways' revenue caps for the movement of Western grain, the development of railway costing standards and related regulations and the audit of railway companies' accounting and statistics-generating systems (as required), all fall within the branch's responsibility.

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

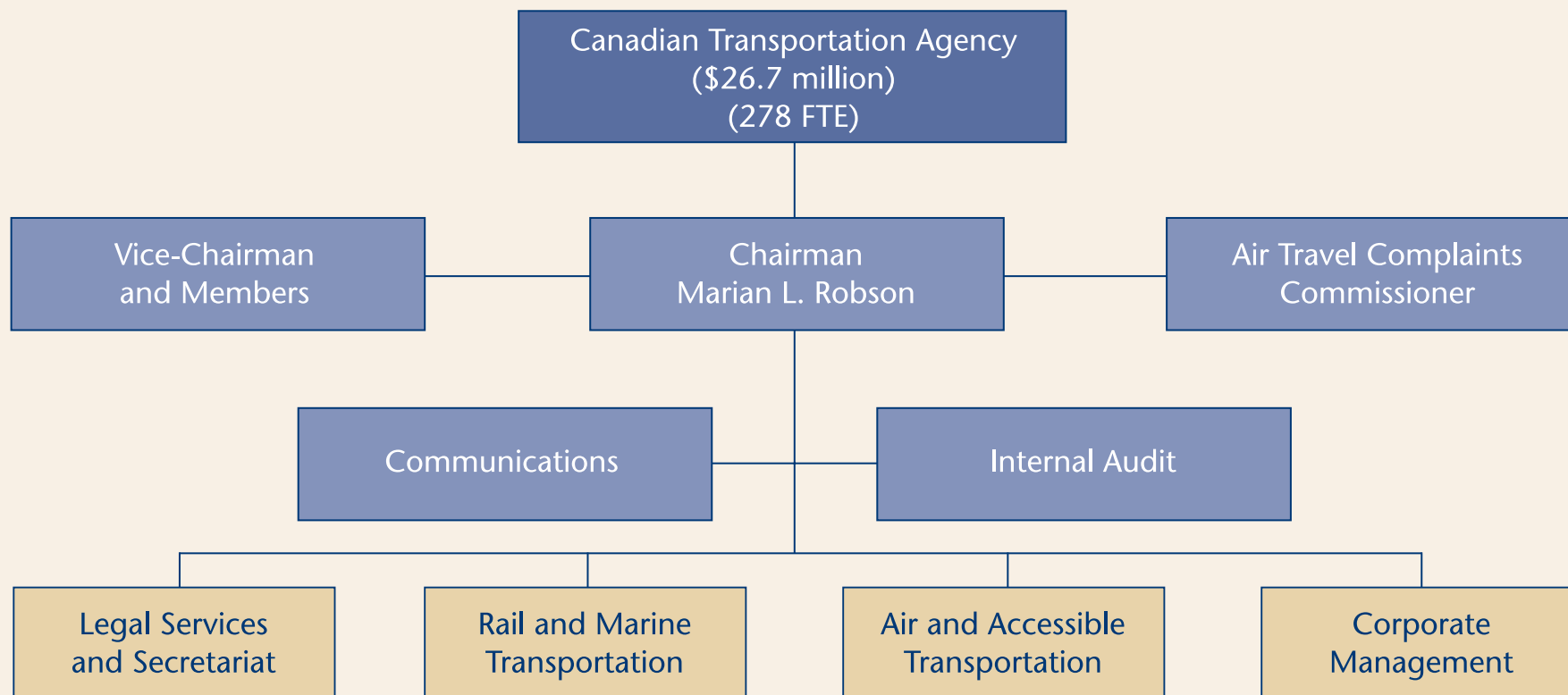
In respect to pilotage and ports, the Agency is authorized to determine, in response to a complaint, whether tariffs, tolls and fees are unjust, unreasonable, discriminatory or prejudicial to the public interest.

The Legal Services and Secretariat Branch provides legal advice and counsel in all matters brought before the Agency.

The branch also provides legal advice and counsel in enforcement cases and in cases of complaints that are brought to the attention of the Air Travel Complaints Commissioner. It represents the Agency before the courts, including the Federal Court of Appeal and the Supreme Court of Canada, when Agency decisions are submitted to the appeal process. Branch staff also assists with Agency meetings and hearings.

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

The Corporate Management Branch supports the overall function of the Agency by providing corporate services related to human resources, strategic planning, finance and administration, security, information management and technology, and the library.



HOW WE DO IT

The Formal Hearing Process

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

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

The Members consider all evidence on file with the Agency, as well as the legislation, regulations and legal principles that are applicable. The Agency processes each complaint as quickly as possible. The decision-making 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 also 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 an issue cannot otherwise be resolved through the formal hearing process. Although similar in process, a modified hearing is simpler than a formal hearing in that it takes place around a conference table. Members question witnesses directly and Agency 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 still maintaining the inherent benefit associated with a formal hearing.

Appealing an Agency Ruling

Should the parties involved in a proceeding not agree with a decision or an order, they have a right to appeal. Any decision or order may be appealed to the Federal Court of Appeal on a question of law or jurisdiction, within one month of the order or decision; and may be petitioned

to the Governor-in-Council at any time. In addition, any decision or order may be reviewed by the Agency if there has been a change in the facts or circumstances pertaining to the decision or order.

Mediation

The Agency's commitment to mediation as an option in solving disputes continued in 2003, reinforced by increased use and acceptance from both transportation users and service providers. Introduced as an informal alternative to the Agency's formal adjudicative process in 2000, mediation is actively promoted for disputes dealing with rail, marine and accessible transportation. The Air Travel Complaints Commissioner and her staff also employ informal dispute resolution alternatives to resolve air travel complaints.

Mediation is a voluntary process, carried out under the guidance of a mediator, in a controlled yet informal setting to maintain a balance between parties of differing strengths. The process allows disputing parties to develop creative solutions that may not be available through formal adjudication. Mediation is confidential and non-confrontational, allowing each side in a dispute to

understand the perspective of the other party, identify facts, check assumptions, exchange ideas, recognize common ground and test possible solutions.

An external evaluation of the mediation program began in 2003 and the results are expected in 2004. Meanwhile, the Agency is satisfied with the favourable response to the program and will continue to promote mediation as a valuable resource in resolving transportation disputes.

IMPROVING MANAGEMENT PRACTICES

Modern Comptrollership

Modern comptrollership is a key priority of the Government of Canada, as described in *Results for Canadians*, a Treasury Board report tabled in Parliament in March 2000.

Modern comptrollership emphasizes integrating financial information with performance measurement, vigorous stewardship of resources, risk management and open reporting of results. Efforts are aimed at enabling more appropriate choices that will lead to better service and better public policy.

Modern comptrollership is also a priority of the Agency. In 2003, the Agency continued implementing its management excellence action plan. The plan focuses on improving the allocation of internal resources to ensure consistent and optimal use; developing and implementing a performance measurement framework and strategy to better report on results both internally and to Parliament and Canadians; and developing a framework to integrate the concept of risk management throughout the Agency. As the Agency continues this work, it expects to further improve the way it delivers its services to Canadians.

Agency Effectiveness Review

At the annual senior management planning session in the fall of 2003, it was decided to hire an independent firm to conduct a review of the Agency's effectiveness as an organization. Sussex Circle was hired to carry out the study with specific instructions to identify and analyse issues and concerns that are impediments or challenges to the Agency's effectiveness; and to develop strategies, including implementation considerations, that could mitigate such issues and concerns.

Interviews were conducted with the Agency Chairman, Vice-Chairman, Members, the Air Travel Complaints Commissioner, and senior management. There were also focus groups involving management and staff from all areas of the Agency.

The full report from Sussex Circle, called the Canadian Transportation Agency Effectiveness Review, will be formally submitted to the Agency in January 2004. Preliminary findings were that the Agency is perceived by staff to be a good place to work; that it has a strong culture of organizational harmony and cohesiveness; and that the Agency's mandate is continuing to evolve. It was also noted that there is some misaligned resource distribution in the face of heavy workload demands in certain areas and that some processes need to be streamlined.

Union Consultations

The Agency consults regularly with its unions, including the Union of Canadian Transportation employees, the Association of Public Service Financial Administrators, the Social Science Employee Association and the Professional Institute of the Public Service of Canada. Bi-annual meetings are held with union representatives at the national level to discuss matters of common interest, to

maintain clear lines of communication and resolve issues as required. As well, periodic meetings with local union representatives ensure a good working relationship and stable environment within the Agency.

The union representatives are invited, for example, to some of the Executive Committee meetings and are consulted on the agenda of the annual senior management planning session to ascertain their concerns.

Official Languages

The Agency made progress in 2003 on its Language of Work Initiative: A Challenge to Excellence. The Agency's Official Languages Committee developed and shared with all employees the tools and best practices that will help create a work environment more conducive to the use of both official languages.

The Committee also reviewed and updated the Agency's policy to ensure it meets the Access to Justice requirements of the *Official Languages Act* and incorporates the latest government directions on official languages. The Committee consulted employees who had taken language training in order to find ways to maintain the acquired level of proficiency in the second language, and identified some

initiatives that will help fulfil that objective. In 2004, the Committee will make recommendations to the Agency's Executive Committee on an amended policy and on ways in which employees can maintain their proficiency levels in the second language.

Succession Planning

The Agency, like the majority of Public Service organizations, faces a loss of corporate memory and skilled workers as the baby boom generation approaches retirement age. It must therefore re-align its human-resources planning to better address knowledge management, demographics, diversity and succession issues.

In 2003, the Agency finalized and began implementing its Succession Plan, which is intended to balance the continuing development of current staff with the need for external recruitment to ensure the renewal and diversification of the Agency workforce. This plan was aligned with the Canadian Government's modernization of human resources management legislative initiative. The Agency's approach to succession planning was considered by Treasury Board Secretariat to be a best practice in the Government of Canada.

Government On-Line

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

In 2003, the Agency continued to introduce improvements to its Web site to ensure that it is client-oriented and that it complies with the Government of Canada's Common Look and Feel Standards for Internet Web sites.

The Agency Web site has an e-mail link for the public to send in comments or questions.

In 2003, the Agency received 36 e-mail messages about accessible transportation, 65 about air transportation, 64 about rail and 23 about marine matters. There were another 217 e-mail messages regarding general Agency issues.

The Agency received 485 air travel complaints via its on-line Web form on the Agency Web site.

Also in 2003, a total of 895 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.

During 2003, the Agency posted on its site: 503 general announcements (e.g. news releases, speeches); 337 concerning accessible transportation; 515 on air transportation; 392 on rail transportation; 283 concerning marine transportation; 270 on consumer complaints; and 250 on pricing complaints.

Accessibility Advisory Committee

The Agency's Accessibility Advisory Committee and Working Group participants help the Agency develop codes of practice, industry guidelines and a variety of educational and communications products on accessibility. In addition to meeting annually with the committee, the Agency consults it on a regular basis regarding a wide range of projects. Representatives from the community of persons with disabilities and from the transportation industry and other interested parties are members of this committee.

Representatives from the Community of Persons with Disabilities

Canadian Association for Community Living	J. Mahaffy
Canadian Association of the Deaf	K. R. Nichols
Canadian Association of Independent Living Centres	T. Walters and V. Miele
Canadian Council of the Blind	J. Rempel
Canadian Hard of Hearing Association	C. Cantlie
Canadian Hearing Society	L. McIntyre
Canadian National Institute for the Blind	C. Moore
Canadian National Society of the Deaf/Blind	P. Leclair
Canadian Paraplegic Association	S. Little
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
Learning Disabilities Association of Canada	J. Devoe
National Federation of the Blind: Advocates for Equality	M. Cummings
Seniors' Voice	W. Coates

Representatives from the Transportation Industry

Air Canada	B. Racine
Association québécoise des transporteurs aériens inc.	B. Jenner
Air Transport Association of Canada	W. Everson
Railway Association of Canada	G. Gauthier
Canadian Airports Council	S. London
Marine Atlantic	W. Harbin
VIA Rail Canada Inc.	J. Lemire and K. Coffen

Other Interested Parties

Canadian Human Rights Commission	H. Goldberg
Government of Alberta	S. Wong
Human Resources Development Canada	M. Regnaud

Transport Canada

Cabin Safety Standards	F. Wokes
Transportation Development Centre	B. Jamieson-Smith
Accessible Programs	B. Nelson
Regulatory Standards	N. Vachon

STATUTES AND REGULATIONS

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

The Agency has primary responsibility for the following legislation:

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

<i>Access to Information Act</i>	R.S.C. 1985, c. A-1
<i>Canada Marine Act</i>	S.C. 1998, c. 10
<i>Canadian Environmental Assessment Act</i>	S.C. 1992, c. 37
<i>Civil Air Navigation Services Commercialization Act</i>	S.C. 1996, c. 20
<i>Coasting Trade Act</i>	S.C. 1992, c. 31
<i>Energy Supplies Emergency Act</i>	R.S.C. 1985, c. E-9
<i>Financial Administration Act</i>	R.S.C. 1985, c. F-11
<i>Official Languages Act</i>	R.S.C. 1985, c. 31 (4th Supp.)
<i>Pilotage Act</i>	R.S.C. 1985, c. P-14
<i>Privacy Act</i>	R.S.C. 1985, c. P-21
<i>Public Service Employment Act</i>	R.S.C. 1985, c. P-33
<i>Public Service Staff Relations Act</i>	R.S.C. 1985, c. P35
<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</i>	R.S.C. 1985, c. 17 (3rd Supp.)

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

Air Transportation Regulations	(SOR/88-58)
Canadian Transportation Agency Designated Provisions Regulations	(SOR/99-244)
National Transportation Agency General Rules	(SOR/88-23)
Personnel Training for the Assistance of Persons with Disabilities Regulations	(SOR/94-42)
Railway Costing Regulations	(SOR/80-310)
Railway Interswitching Regulations	(SOR/88-41)
Railway Third Party Liability Insurance Coverage Regulations	(SOR/96-337)
Railway Traffic and Passenger Tariffs Regulations	(SOR/96-338)
Railway Traffic Liability Regulations	(SOR/91-488)
Uniform Classification of Accounts and Related Railway Records Designated Provisions Regulations	(SOR/99-244)

The Agency shares responsibility for the following regulations:

Carriers and Transportation and Grain Handling Undertakings Information Regulations	(SOR/96-334)
Jacques-Cartier and Champlain Bridges Inc. Regulations	(SOR/98-568)
Seaway International Bridge Corporation Ltd. Regulations	(SOR/98-569)

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

Details of Maps, Plans, Profiles, Drawings, Specifications and Books of Reference	(General Order E-1) (SOR/80-482)
Height of Wires of Telegraph and Telephone Lines Regulations	(General Order E-18) (C.R.C., c. 1182)
Joint Use of Poles Regulations	(General Order E-12) (C.R.C., c. 1185)
Railway Grade Separations Regulations	(General Order E-5) (C.R.C., c. 1191)
Railway-Highway Crossing at Grade Regulations	(General Order E-4) (SOR/80-748)
Wire Crossings and Proximities Regulations	(General Order E-11) (C.R.C., c. 1195)