

Canadian  
Transportation  
Agency



Office  
des transports  
du Canada

## **Annual Report 2006**

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May 2007

The Honourable Lawrence Cannon, P.C., M.P.  
Minister of Transport, Infrastructure and Communities  
Tower C - 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 2006, including the Agency's assessment of the operation of the Act and any difficulties observed in its administration.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Geoffrey C. Hare', with a stylized flourish at the end.

Geoffrey C. Hare  
Chairman and Chief Executive Officer



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# Message

## from the Chairman

I am pleased to present the Canadian Transportation Agency's Annual Report which demonstrates the work and service the Agency provided to Canadians in 2006, as well as describes the Agency's assessment of the operation of the *Canada Transportation Act* in an ever evolving industry.

The Agency's mandate is to administer the laws that govern the economic regulation of the air, rail and marine modes of transportation under federal jurisdiction. Among other responsibilities, it also serves as a dispute resolution authority over certain transportation rate and service complaints, as well as facilitates accessible transportation, licenses air and rail carriers, approves railway line construction, administers the railway revenue cap for Western grain, protects the interests of Canadian marine vessel operators. In addition, it also administers those aspects of the international air agreements within its jurisdiction as one of Canada's aeronautical authorities.

The work of the Agency is largely shaped by the environment in which it operates. The transportation industry has continued to be one of the most dynamic sectors of our economy, and one that has a significant impact on the lives of individuals and businesses across Canada, as well as our national, regional and provincial economies. Over the past several years, there has also been a renewed focus on demonstrating the value of government services to Canadians. Given these factors, the Agency continued to focus its efforts on fulfilling its mandate as an economic regulator in a manner that is responsive, efficient, fair and transparent.

As the national transportation system evolves and develops, the issues the Agency is required to resolve under its mandate have also become more complex. The Agency continued to resolve disputes in Canada's transportation system in 2006, such as those between shippers and railways; air travellers and airlines; and persons with disabilities and federally regulated passenger carriers. We get thousands of applications every year, simple and complex, each of them equally important to those affected.

In 2006, the Agency issued a total of 3,457 rulings. These rulings were made up of 717 decisions, 677 orders, 1,715 permits, 60 final letter decisions and 288 interlocutory decisions. Of those, 2,921 rulings related to air transportation, 249 related to rail, 125 to marine and 162 to accessible transportation.

Mediation, as an alternative dispute mechanism to the Agency's formal processes, continued to achieve an impressive rate of success and client satisfaction, assisting parties in reaching settlements faster and in a less costly manner.

The Agency also developed the fifth in a series of voluntary Codes of Practice in consultation with the community of persons with disabilities, the transportation industry and government, which will be launched in 2007. This Code is intended to support the objective of removing accessibility barriers for persons with disabilities within air, rail and marine passenger terminals, thereby improving their ability to travel independently.

While there has been considerable progress over the past year, there are still challenges that face the transportation industry and its customers. The Agency will continue to be called upon to resolve consumer complaints and to address issues such as carrier licensing, consumer protection, and accessibility for the travelling public, to name a few. In the coming years, the Agency will succeed in facing these challenges in large part due to the strength of its people.

I want to take this opportunity to both recognize and acknowledge the work and dedication of Marian L. Robson who completed her 10 years as Chairman of the Agency in June 2006, as well as Vice-Chairman Gilles Dufault who was Acting Chairman for the last six months of the year.

It is a privilege and an honour to serve as Chairman of the Agency and I look forward to continuing these efforts in ensuring an effective and accessible transportation network in Canada.

A handwritten signature in dark ink, appearing to read 'G. Hare', with a stylized flourish at the end.

Geoffrey C. Hare  
Chairman and Chief Executive Officer



# Executive Summary

Pursuant to its enabling statute, the *Canada Transportation Act*, the Canadian Transportation Agency is responsible for administering laws that govern the economic regulation of air, rail and marine modes of transportation under federal jurisdiction.

Over the past calendar year, the Agency issued 3,457 rulings: 717 decisions, 677 orders, 1,715 permits, 60 final letter decisions and 288 interlocutory decisions. Air transportation issues were the focus of 2,921 rulings, with the accessibility sector accounting for another 162. The Agency's rail and marine transportation mandates accounted for 249 and 125 rulings, respectively.

In addition to exercising its decision-making powers, the Agency's efforts to make Canada's transportation system efficient and accessible included a wide range of activities, including consulting and informing transportation users, providers and other stakeholders about their rights and obligations.

The main chapters of this Annual Report summarize the Agency's work in its four chief areas of responsibility: accessible, air, rail and marine transportation. The report also provides a snapshot of the Agency's operations and its related assessment of the *Canada Transportation Act*.

As an introduction to the organization, the **About the Agency** chapter provides insight into how the Agency carries out its work. Readers will find information on the decision-making process, mediation and dispute resolution in general, as well as on other corporate initiatives.

Significant developments from 2006 covered in **Accessible Transportation** included Air Canada advising the Agency that, as a result of the complaint adjudication process, it would enhance its reservation system to give persons with disabilities a greater variety of options when booking their travel on-line. The year also saw the Agency hold an oral hearing to examine fares and charges for persons requiring additional seating (for themselves or for their personal-care attendants) to accommodate their disabilities. The Agency also continued its work on major cases regarding such issues like allergies as disabilities.

In **Rail Transportation**, the Agency determined that both the Canadian National Railway Company (CN) and the Canadian Pacific Railway Company (CPR) had exceeded their revenue caps for the movement of Western grain. The Agency continued to assist Transport Canada in assessing the potential impact of the disposal of the government's 12,400-car fleet on the revenue cap regime. In May 2006, the Minister of Transport,

Infrastructure and Communities announced that the Government of Canada would retain ownership of its hopper car fleet rather than transfer the cars to a farmers' coalition. Finally, the organization approved three railway construction projects and pursued its assessment of numerous other rail-related initiatives being proposed across the country.

Statistics compiled from the Agency's work on **Air Transportation** matters showed an overall slight increase in the number of complaints investigated over the previous year. The number of complaints are approximately consistent with the market share of Canadian and foreign air carriers and the increase in use of air travel by Canadians. Major rulings on specific tariff issues included decisions on two complaints regarding mandatory check-in times at airports, on an air carrier's liability related to the carriage of animals, and on airline surcharges for the transportation and handling of firearms.

Following a week-long hearing in Nanaimo, British Columbia in May 2006, the Agency made an important **Marine Transportation** ruling on passenger fees fixed by that city's port authority. It found that the different fees imposed by the port on float plane and ferry operators were unjustly discriminatory. Later in the year, the Federal Court of Appeal granted the Nanaimo Port Authority leave to appeal the Agency's ruling. Still in the marine sector, a 2005 Agency decision that rejected part of a fee increase proposed by the Laurentian Pilotage Authority was rescinded by the Governor in Council in June 2006. In the fall, the Agency issued a ruling in favour of a Great Lakes Pilotage Authority fee increase. One month later, the Canadian Shipowners Association filed an application with the Federal Court of Appeal for leave to appeal the Agency's decision.

Finally, the chapter on the **Assessment of the Act** provides an update on the Agency's assessment of the operation and administration of the *Canada Transportation Act*.

# About the Agency

## Members



**Geoffrey C. Hare,**  
*Chairman and Chief Executive Officer*

Former senior public servant with the Ontario government and that province's first-ever Deputy Minister of Public Infrastructure Renewal

Appointed February 12, 2007



**Gilles Dufault,**  
*Vice-Chairman; Acting Chairman June 2006 to December 2006*

Former VIA Rail executive and business strategy consultant

Appointed January 19, 1998, as a Member; appointed Vice-Chairman in August 2000; reappointed January 19, 2001; reappointed January 19, 2006



**Marian L. Robson,**  
*Chairman and Chief Executive Officer*

Former port executive, railway manager and National Transportation Agency Member

Appointed July 1, 1996; reappointed July 1, 2001; end of term June 2006



**Mary-Jane Bennett,**  
*Member*

Lawyer and active member of various boards and committees

Appointed January 19, 1998; reappointed January 19, 2001; reappointed May 17, 2004



**Guy Delisle,**  
*Member*

Lawyer and former senior legal counsel and temporary member of the National Energy Board

Appointed January 8, 2002



**Baljinder S. Gill,**  
*Member*

Former Member of the Ontario Highway Transport Board; former Chief of Facility Planning, Marine Technical and Support Services, Transport Canada

Appointed April 26, 2004



**George Proud,**  
*Member*

Former Member of Parliament for Hillsborough; former Member of the Legislative Assembly of Prince Edward Island

Appointed January 8, 2001; reappointed January 8, 2002



**Beaton Tulk,**  
*Member*

Former Deputy Premier and Premier of Newfoundland and Labrador; former Minister of Industry, Trade and Rural Development

Appointed December 16, 2002

## Our mandate

The Agency has a mandate to administer the economic regulatory provisions affecting air, rail and marine modes of transportation under federal jurisdiction found in various Acts of Parliament.

## Our mission

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

## Our values

The Agency is committed to four core values, which constitute its code of conduct in achieving its mission:

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

## Our work

As an independent, quasi-judicial tribunal, the Agency is empowered by the *Canada Transportation Act* to make decisions on a wide range of matters involving federally regulated modes of transportation (air, rail and marine). Its decision-making process is governed by the *Canadian Transportation Agency General Rules*, entrenching the rules of fairness, which ensures that all parties to an application or a complaint are dealt with fairly and equitably. Most of the Agency's activities and workload are generated by demand from users and operators of the federal transportation system. The tribunal's decisions are rendered by Agency Members who are appointed by the Governor in Council. This includes the Chairman, who is also the organization's Chief Executive Officer.

The Agency ensures that its Members and staff maintain a high level of expertise in the transportation field and keep abreast of the constant evolution of the industry and its players.

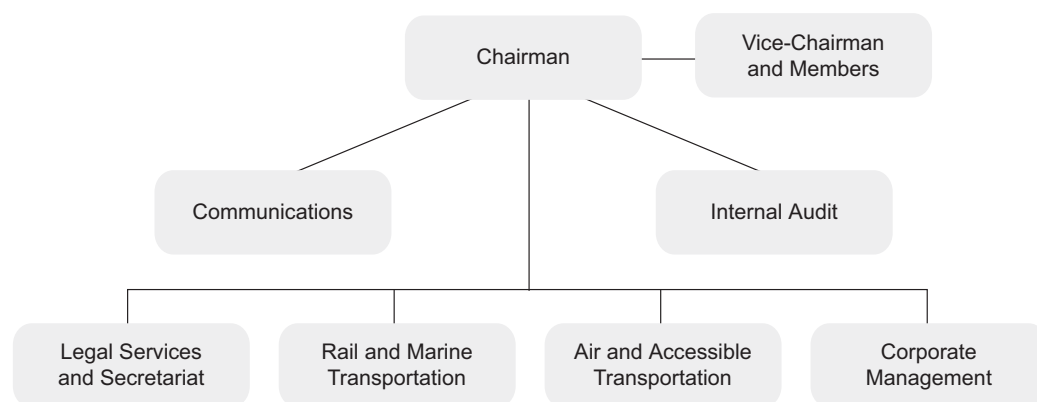
Where possible, the Agency may offer mediation as an alternative to its formal adjudicative process. This allows parties to resolve their issues in an informal manner that is faster and less costly than the Agency's traditional process.

In addition to the formal decision and mediation processes offered by the Agency, staff also use informal facilitation to resolve many transportation issues affecting air, rail, marine and accessible transportation, often before a formal complaint is filed.

As evidenced by the wide variety of options it makes available, the Agency continues to improve its approach to providing efficient and effective dispute resolution.

## Organizational structure

Approximately 267 employees provide operational support and assist up to seven full-time Agency Members. Apart from the branches supporting its main areas of responsibility for accessible, air, rail and marine transportation, the Agency's organizational structure also includes the Legal Services and Secretariat Branch, the Corporate Management Branch and the Chairman's Office, which includes Internal Audit and the Communications Directorate.



## Air transportation

The Agency issues licences and charter permits to Canadian and foreign air carriers offering publicly available services and enforces licensing requirements. It helps in the negotiation and implementation of international air agreements, and administers international air tariffs.

The Agency helps to protect the interests of the travelling public, shippers and Canadian air carriers by ensuring that fares, rates, charges, and terms and conditions of carriage

are consistent with Canadian legislation and regulations, namely, that they are reasonable, not unduly discriminatory, and are consistent with relevant bilateral air agreements.

As part of its consumer protection role, the Agency deals with complaints about air travel. Such complaints are usually handled through an informal resolution process. Others may be addressed through formal adjudication where a complainant is dissatisfied with the outcome of the informal process and the complaint relates to the possible failure of a carrier to properly apply its published terms and conditions of carriage, or where a complainant believes that a carrier's tariff may be unreasonable.

## Accessible transportation

Under Part V of the *Canada Transportation Act*, the Agency has the mandate to eliminate undue obstacles to the mobility of persons with disabilities in the federal transportation network, which includes air, rail, marine and inter-provincial bus transportation.

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

## Rail transportation

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

## Marine transportation

The Canadian Transportation Agency exercises its marine mandate under the *Coasting Trade Act*, the *Canada Marine Act*, the *Pilotage Act* and the *Shipping Conferences Exemption Act, 1987*. In response to applications to use foreign ships in Canadian waters, the Agency makes recommendations to the Minister of National Revenue on whether suitable Canadian ships are available to perform the activity described in the application. The Agency also has the power to determine, in response to a complaint, whether tariffs, tolls and fees established by a federal port authority, the St. Lawrence Seaway Development Corporation, the Federal Bridge Corporation or a pilotage authority are unjust, unreasonable, discriminatory or prejudicial to the public interest. Finally, the Agency administers the *Shipping Conferences Exemption Act, 1987*, and examines complaints of unreasonable increases in transportation costs or unreasonable reductions in service.



Apart from the two branches responsible for the day-to-day operations of the responsibilities mentioned above, the Agency equally counts on its other components to ensure its ability to deliver its mandate.

**Legal Services Directorate** provides legal advice and counsel concerning the application of any of the Acts within the mandate of the Agency and on any other concern. It also represents the Agency before the courts when Agency decisions are submitted to the appeal process.

The **Secretariat** has the duty, under the *Canada Transportation Act*, of maintaining records of the Agency's rules, orders, decisions and regulations. It also plays a major role in developing and applying the Agency's procedures and regulations.

The **Internal Auditor** is responsible for providing objective assessments about the design and operation of management practices, control systems and information.

**Communications Directorate** activities are carried out in various ways to ensure that Canadians understand their rights and obligations along with the Agency's mandate.

**Corporate Management Branch** personnel support the overall function of the Agency by providing corporate services related to human resources, strategic planning, financial management and administration as well as information management and technology.

## The Agency as part of the Government of Canada

### Strategic outcomes

During 2006, the Agency worked toward achieving three main priorities: the fair, effective and efficient resolution of federal transportation issues; the removal of undue obstacles for persons with disabilities from federally regulated transportation, and the protection of the economic and other interests of transportation users, carriers and other affected parties.

The Agency's priorities and activities are directly aligned with the broader Government of Canada outcome of assuring a fair and secure marketplace. They also help improve the overall quality of life in Canada, as an efficient and accessible transportation system benefits all Canadians.

### Key partners

The Agency is one of many players involved in Canadian transportation and maintains close ties with its various government partners, including Transport Canada, the Depart-

ment of Foreign Affairs and International Trade, the Canada Border Services Agency and the Canadian Human Rights Commission.

## Service improvement

Providing high quality service to Canadians is a core value of the Agency in achieving its mission. The Agency strives to provide the highest level of expertise and to reach decisions through an impartial, transparent and fair process. While the Agency has limited capacity to conduct broad, ongoing surveys, periodic formal and informal feedback is sought from shippers, producers, carriers and consumers. Further, all participants in the Agency's mediation process are asked to provide feedback on the process. This feedback has been a valuable tool in identifying priority areas for improvement.

## Human resources management reform

Since the implementation of the new *Public Service Modernization Act* and a more adaptable staffing regime, the Agency has focussed on improving its integrated human resources planning strategy. The demographic challenges faced by public service organizations such as the Agency will require continued efforts to ensure the organization sustains the internal expertise and capacity to effectively support the Agency's mandate. The implementation of staffing reforms from the *Public Service Modernization Act* provides the Agency with the means to facilitate the creation of qualified candidate pools to address vital succession issues at all levels.

## Communicating with Canadians

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

In addition, the Agency offers a subscription service permitting subscribers to keep current with new decisions and orders, any new content to the Web site, news releases and new publications. In 2006, there were 1,460 subscribers to this service.

## Dispute resolution and decision-making process

Agency Members remain open-minded to ensure that decisions are both responsive and responsible. Members weigh parties' interests in a fair and transparent manner, and carefully review all information submitted to them.



## The formal hearing process

When an application or complaint is filed with the Agency, a panel of at least two Members is appointed to consider it. According to its General Rules, the Agency ensures that each party to an application or complaint has the opportunity to file its submissions. Agency staff provides research or analysis required by Members who then consider the matter and issue a decision. The process must be completed within 120 days unless the parties agree to an extension. While most cases are resolved through file hearings with written pleadings, Members may hold public hearings, usually for more complex cases.

## The modified hearing

Modified hearings were developed by the Agency to help resolve disputes when a question or an issue could not otherwise be resolved through a file hearing but which does not warrant a public hearing. For instance, a modified hearing may be used to resolve facts that are disputed in the proceedings or where the facts or issues raised in the proceedings are complex. A modified hearing is simpler than a public hearing in that only the parties involved and their witnesses are present. Usually such a hearing takes place around a conference table where Members question witnesses directly and Agency resources needed to assist Members are kept to a minimum. This modified process allows for a timely, less costly and less formal hearing process than a public hearing.

## Mediation: Alternative dispute resolution

Mediation is a confidential, voluntary and informal process, allowing disputing parties to develop creative solutions that may not be available through formal adjudication. At year end, Parliament was reviewing proposed amendments to the *Canada Transportation Act* that would entrench the Agency's mediation process in legislation and foster the greater use of such alternative dispute resolution methods to settle complaints.

## Challenging an Agency ruling

Should parties in a proceeding not agree with a decision or an order, they may:

- apply to the Agency for a review if, since the date of the decision or order, there has been a change in the facts or circumstances pertaining to the decision or order;
- seek leave to appeal to the Federal Court of Appeal on a question of law or jurisdiction within one month after the date of the decision or order; or,
- petition the Governor in Council at any time.

# Accessible Transportation

The resolution of an accessible transportation dispute can have far-reaching impacts. It can change a transportation service provider's policies and procedures to benefit future travellers, and it can send a message to other service providers in the transportation industry about what the Agency considers undue obstacles to the mobility of persons with disabilities.

To ensure an accessible federal transportation network for Canadians, the Agency works to resolve accessibility disputes and to address related concerns in three ways: facilitation, mediation and complaint adjudication.

## Facilitation

A traveller with a disability may have accessibility concerns when planning a trip or making a reservation. In 2006, Agency staff worked diligently to alert carriers to travellers' concerns and to suggest ways to address them. In response to inquiries, Agency staff facilitated the resolution of travel problems by taking early action to avert or alleviate situations that might have caused obstacles to the mobility of persons with disabilities and to remedy situations before a formal complaint was filed. In certain cases, consultations with transportation service providers and Agency staff resulted in persons with disabilities resolving their issues with service providers and withdrawing their complaints to the Agency.

## Mediation

Mediation continued to be offered as an option for settling accessible transportation disputes simply, effectively, quickly and collaboratively. Mediators and the parties work together as joint problem solvers and develop solutions tailored to the specifics of each situation.

There were four cases in progress at the beginning of the year and four new requests for mediation were received during the year. All eight files were closed in 2006.

The eight cases involved two major air carriers on issues such as wheelchair assistance, on-board seating and assistance, damage to a mobility aid and lack of assistance for pre-boarding and deplaning. In the past, through mediation, the Agency has settled accessible transportation disputes with Canada's major passenger rail carrier, Canadian

airport authorities, several major air carriers and private citizens. Issues that were brought to mediation related to persons with mobility, vision, hearing and intellectual disabilities.

→ **FACILITATION WITH  
TRANSPORT CANADA  
AND AIR TRANSAT**

The Agency received a call from a woman concerning her 11-year-old son who has cerebral palsy, a condition that makes it impossible for him to use a standard seat belt. Air Transat had apparently indicated that the only way her son could travel was to be secured to a seat with a certified harness. The woman found what she thought was a suitable device and, after initial discus-

sions with the manufacturer, asked Agency staff if it would be acceptable. The Agency confirmed the absence of any testing and certification for such a device with Transport Canada's Cabin Safety Team. Arrangements were made with Transport Canada to provide assistance to help the woman submit an application for an exemption from the existing requirement in order to travel.

## Complaint adjudication

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

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

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

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

## Complaint statistics

In 2006, the Agency received 46 accessibility-related applications. It issued 42 decisions, some dealing with applications received prior to January 1, 2006, and others dealing with applications received in 2006. Of these decisions, 21 resolved new applications and 20 determined whether corrective measures ordered by the Agency in previous decisions had been implemented. One ruling was made in respect of an application for review of an Agency decision. In addition, 128 procedural and other interlocutory decisions were issued regarding matters still under consideration. One of these rulings set out preliminary findings and required the respondent to answer a direction to show cause. Eight applications were withdrawn, 10 were closed due to the lack of response from the applicants, 21 were closed as a result of a dispute being resolved informally through facilitation and eight were successfully resolved through mediation. The Agency also facilitated the resolution of various concerns prior to travel for the benefit of persons with disabilities.

### → POSITIVE RESULTS THROUGH FACILITATION

In various cases, the applicants were satisfied that the issues raised had been fully addressed and remedied by the airlines, and withdrew their complaints from the Agency.

In one case, Northwest Airlines personnel carried an applicant, who is paraplegic, up and down aircraft stairs at the Ottawa airport, rather than using a mechanical lift to transport her. In its response, Northwest Airlines not only indicated that its Ottawa airport ramp personnel would be receiving refresher training on the proper use of mechanical lifts, but also confirmed that one or more

of its Ottawa agents would be trained as accessibility specialists.

In another case, Air Transat provided assistance at Montréal's Pierre Elliot Trudeau Airport to a person who has difficulty walking due to diabetic neuropathy. The use of a motorized cart instead of a more suitable wheelchair resulted in the person having difficulty climbing into the cart and having to walk some distance through the airport. Air Transat subsequently issued a bulletin on the applicant's experience to all of its station personnel, noting that passengers with disabilities must be given the option of a wheelchair or a motorized cart.

## Air Canada's on-line reservation system

Following the issuance of a show-cause order in 2005, Air Canada made modifications to its existing RES III on-line reservation system to make it more user-friendly to persons with disabilities.

Persons with disabilities should ideally be able to make their reservations on-line without having to call an Air Canada reservation agent to confirm services. However, the Agency was satisfied that, due to technical limitations, the company could not immediately make additional changes to its existing reservation system without jeopardizing its reliability for all users. Given Air Canada's intention to create a new reservation system (RES IV), no further corrective measures to the RES III system were ordered, beyond the addition of:

- contact information for persons with disabilities in Canada or abroad who must contact a reservation agent to complete their on-line reservation;
- notification that persons, who are travelling with a battery-operated wheelchair, who require wheelchair assistance within the aircraft and whose needs are not met by the selection options for disability-related services on Air Canada's Web site, should contact the airline to discuss the services they require; and
- clearer descriptions of the exact services provided by each of the three types of wheelchair assistance.

Among the many factors considered by the Agency were Air Canada's submissions on short wait times with their call centre from persons with disabilities who must confirm or discuss their on-line reservations. In addition, the usual \$25 fee for booking through a reservation agent would be waived for persons with disabilities who call to confirm on-line bookings.

The Agency also recommended a policy change requiring agents to contact persons with disabilities reserving on-line to ensure their needs are met. In addition, the Agency urged the airline to be mindful of accessibility issues when planning its new RES IV system, and recommended consultations with persons with disabilities in order to fully understand their needs.

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

In May 2006, the Supreme Court of Canada heard an appeal by the Council of Canadians with Disabilities of a Federal Court of Appeal ruling in favour of VIA Rail on the Agency's finding on the accessibility of the carrier's new Renaissance cars. As part of the appeal process, Agency legal counsel appeared before the Supreme Court of Canada. The Agency put on hold four other cases involving VIA Rail that raised similar

rail equipment issues until such time as the Supreme Court issues its ruling. At year end, the Supreme Court had not yet issued its decision on the matter.

## Oral hearing on additional fares and charges (AFC)

In 2006, the Agency continued investigating an application filed by the Council of Canadians with Disabilities, the late Eric Norman, and Joanne Neubauer. The application involves domestic fares and other charges for persons with disabilities who require additional seating for themselves or for their personal-care attendants. The other parties in the case are Air Canada, Air Canada Jazz, WestJet, Gander International Airport Authority and the Air Transport Association of Canada.

The second stage of an oral hearing into the matter was held in Toronto in November, with final arguments heard in Ottawa on December 12, 2006. The first phase of the hearing was held in 2005.

Using evidence gathered at the hearing from applicants, respondents and expert witnesses, the Agency must now determine if these fares and charges represent undue obstacles and if so, what corrective measures should be ordered. A decision in this application is expected to be issued in 2007.

Other Agency cases which raise similar issues involving Air Canada are on hold pending the outcome of this application. In addition, the Agency adjourned another similar case involving a foreign air carrier until the domestic applications are resolved.

## Obesity

On January 13, 2006, the Federal Court of Appeal allowed an appeal by Linda McKay-Panos of an Agency decision regarding obesity as a disability for the purposes of Part V of the *Canada Transportation Act*. Ms. McKay-Panos had filed an application with the Agency against Air Canada concerning the seating accommodation provided to her and the carrier's policy of charging passengers for additional seating required due to their obesity. The Agency dismissed her complaint in October 2002. In its ruling, the Court of Appeal set this decision aside, concluded that Ms. McKay-Panos was in fact a person with a disability, and referred the matter back to the Agency to determine whether she encountered an undue obstacle to her mobility.

Given the similarities between the obesity issue and the application involving additional fares and charges (AFC), the McKay-Panos case and two other obesity-related cases against Air Canada were stayed by the Agency pending a determination on AFC. Ms. McKay-Panos was also granted intervener status by the Agency in the AFC application.



## Allergies

Following the Federal Court of Appeal's 2006 decision on Ms. McKay-Panos' appeal, the Agency resumed its investigative work on sixteen allergy-related cases that had previously been adjourned pending the outcome of this appeal.

The Agency had previously determined that an allergy, per se, is not a disability for the purposes of Part V of the *Canada Transportation Act*. However, it also 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, but that such determinations would have to be made on a case-by-case basis.

In 2006, the Agency closed eight allergy-related cases due to the lack of response to requests for information regarding the applicants' allergies; one case was closed upon request of the applicant. Three applicants withdrew their complaints following the system-wide discontinuation of Air Canada's policy allowing pets in aircraft cabins. In addition, the Agency dismissed an application because the evidence provided was not sufficient to demonstrate that the person had a disability for the purposes of Part V of the Act.

After receiving two new applications in 2006, the Agency pursued its investigation of five allergy-related applications against Air Canada. A sixth application received in 2006 against Swiss International Air Lines continued to be stayed until the Agency completes its investigative work and issues decisions on the related domestic cases.

## Oral hearing planned on the use of medical oxygen

The Agency expects to hold an oral hearing in the fall of 2007 to gather further information on the issue of medical oxygen on board aircraft following 25 complaints against Air Canada and one against WestJet.

In a December 2005 decision, the Agency found that the following constitute obstacles to the mobility of persons with disabilities who require oxygen on board Air Canada:

- the non-provision of medical oxygen prior to boarding, during connections, stopovers and upon arrival at the final destination, as well as the failure to ensure the availability of a portable oxygen tank for on-board washroom use;
- policies and procedures that require:
  - 1) persons to request the airline's medical oxygen, including portable onboard oxygen, in advance of travel;
  - 2) a Fitness for Travel Form be completed by the passenger's physician, including related costs and the level of personal information it discloses;

- 3) fees to be charged for the airline's oxygen service;
- 4) the oxygen tank be placed under the seat in front of the passenger which encroaches on the person's floor space;
- 5) no provision of humidifiers upon request on all of the airline's flights; and
- the level of service that Air Canada provides and, specifically, the reliability of that service.

The Agency also ruled in the WestJet complaint that its refusal to transport persons with disabilities requiring medical oxygen on international and transborder flights constitutes obstacles to their mobility.

The next step of the process is to determine whether or not the obstacles are "undue" under the *Canada Transportation Act*, and if so, what corrective measures may be appropriate to address them. The planned oral hearing, in 2007, will assist the Agency in this process.

## Regulatory work

Two sets of regulations under the Agency's auspices govern the elimination of undue obstacles to the mobility of persons with disabilities: Part VII of the *Air Transportation Regulations* concerning the terms and conditions of carriage of persons with disabilities and the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.

The Agency strives to make carriers and terminal operators aware of the need to maintain a uniform level of basic services to travellers with disabilities. It monitors service providers' Web sites to identify inconsistencies with Agency standards and, in the case of air carriers, for inconsistencies between tariffs and terms and conditions posted on the internet. Although domestic tariffs no longer need to be filed with the Agency, it routinely requests and reviews them to ensure that service commitments to customers with disabilities are reflected.

In 2006, the Agency completed work on modernizing the disability-related provisions of carrier tariffs by developing a domestic "sample" tariff to be used as a guide by service providers. The Agency developed this sample wording to show service providers how to better reflect, in large part, the requirements of the *Air Transportation Regulations* concerning the terms and conditions of carriage of persons with disabilities. Provisions from the newly released *Accessibility Guidelines for Small Aircraft* have also been included. For smaller carriers that had not developed their own tariffs, this example provides wording typically contained in larger carriers' tariffs. This guidance material is expected to be released in 2007 for use by service providers. In addition, the Agency's small aircraft guidelines, which complement material already provided to larger passenger service providers, will be sent to new carriers operating aircraft with 29 seats or fewer.



## Promoting effective training and awareness

The *Personnel Training for the Assistance of Persons with Disabilities Regulations* require carriers and terminal operators in the air, rail and marine sectors to ensure that their employees and contractors are properly trained to assist travellers with disabilities. In 2006, Agency staff worked with air carriers in this regard and carried out regular inspections to ensure that training needs were addressed within the context of the changing realities of the passenger air industry in Canada. In determining which carriers and facilities to visit, Agency staff gives consideration to, amongst other factors, issues raised by the community of persons with disabilities and new entrants to the industry.

Agency staff reviewed training programs against regulation including the requirement to provide requisite training to new employees within 60 days. In 2006, such reviews included training programs of Labrador Airways, Kelowna Airport, London Airport and Winnipeg Airport. Results of these reviews were discussed with the service providers and changes were recommended where appropriate. As well, Agency staff continued its work with Transport Canada to help develop a new training package for transportation service providers called “*Getting on Board*”.

Additionally, and, in part in anticipation of the 2007 Canada Winter Games in Whitehorse, staff met with officials of the following facilities in order to promote the importance of effective training: Yellowknife Airport, Inuvik Mike Zubko Airport, Whitehorse International Airport, Vancouver International Airport, Edmonton International Airport, Norman Wells Airport and Montréal’s Pierre Elliot Trudeau International Airport.

## New Code on passenger terminal accessibility

In 2006, the Agency continued its work on developing a new *Code of Practice: Passenger Terminal Accessibility* (Terminal Code) as part of its efforts to make the federal transportation network more accessible to persons with disabilities. The Terminal Code, as well as an accompanying Guide to assist transportation service providers in implementing the new provisions, will be released at the 11th International Conference on Mobility and Transport for Elderly and Disabled Persons (TRANSED) in Montréal in June 2007.

The Terminal Code and Guide were developed through a series of consultations with the Agency’s Accessibility Advisory Committee (refer to Appendix B), persons and organizations with a demonstrated interest in accessible transportation, the Canadian Airports Council, accessibility representatives from the National Airports System and transportation service providers. Amendments to the Code were made in order to address certain concerns raised during the consultation stage.

The Terminal Code is one in a series of Voluntary Codes of Practice, the others being:

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

## Monitoring the Codes of Practice

The Agency uses various methods to assess the level of industry compliance with its Codes of Practice, including surveys and written reports from carriers and terminal operators on measures to meet Code provisions. Self-reporting is verified through on-site visits by Agency investigators. These visits also provide transportation providers with an opportunity to exchange information and obtain guidance from the Agency to implement accessibility improvements more efficiently.

In 2006, Agency staff specifically continued to monitor the Communication Code that was introduced in 2004. Staff met with transportation service providers to discuss its implementation and provided clarification on related issues. A report on this monitoring program will be released in 2007.

Given the number of Agency Codes of Practice and the increased number of entities involved, a study on other forms of monitoring methods began in 2006 with a view to improving efficiency and enhancing compliance levels. This review will continue in 2007.

## Outreach and airport terminal accessibility audits

Outreach activities pursued by the Agency in 2006 engaged service providers in discussions on travel services for persons with disabilities, in addition to enhancing awareness of regulations, Codes of Practice, decisions issued by the Agency, and sending advisories to the transportation industry. Air North, First Air and Porter Airlines were among the air carriers consulted.

Recognizing the importance of having uniform and reliable accessible transportation services for persons with disabilities from sea to sea to sea, the Agency carried out extensive work in Canada's North during the year. For example, a presentation was made at an airport conference in Yellowknife called "*Ensuring Quality and Safe Services in a Dynamic NWT Economy*". The conference provided an opportunity to educate air-

port managers and personnel from throughout the Northwest Territories on the importance of providing accessible transportation services.

Agency staff also met with consumers at meetings hosted by the NWT Council of Persons with Disabilities. Following a presentation on the Agency's work in accessible transportation, Yellowknife-area organizations shared their concerns with respect to travel in the North and to and from the North.

In Whitehorse, a local group called Challenge Community Vocational Alternatives (CCVA) hosted a four-hour open house where Agency staff provided an overview of its accessibility mandate and discussed various transportation issues of concern with stakeholders. People with disabilities and representatives from CCVA, the Yukon Association for Community Living and the Yukon Council on Disability advised Agency staff of concerns regarding services to unaccompanied adults, maintenance of the Washington chair and other boarding chairs, security screening practices, accessible inter-city bus service and the need for federal government funding for accessible transportation equipment. One of the more significant issues for the region is the need for low-level change devices for aircraft boarding by wheelchair users given that aircraft entry and exit mostly take place at ground level from the airport apron or runway.

During its accessibility audits of airport terminals, Agency staff noted many innovative adaptations for accessible air travel in the North, including exterior ramps with lattice-work floor surfaces to minimize the build-up of snow and ice, and First Air's experimentation with wheelchairs equipped with skis.

## Information bulletins

In 2006, the Agency issued bulletins to stakeholders subject to the Communication Code. For example, it issued a bulletin to terminal operators and air carriers that included information such as corrections to the Communication Code, an update on the Canadian Standards Association's Accessible Design for Self-Service Interactive Devices standard, a recent American position paper calling for tougher accessibility standards for self-service kiosk systems, an update on the forthcoming Terminal Code and Guide and a variety of other items thought to be of interest to terminal operators.

## Air transportation security

The Agency also continued to respond to the growing emphasis on security measures for air travellers to ensure that persons with disabilities are able to pass through new security systems in a dignified way. Work continued with the Canadian Air Transport Security Authority (CATSA) to promote accessibility in new security screening programs. By virtue of a 2004 Memorandum of Understanding signed by the Agency and CATSA, the two organizations continued to monitor security officers' sensitivity training activities in con-

formity with the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.

In January 2006, Agency staff participated in a three-day CATSA workshop held in Ottawa on the theme “Reservation to Destination: The Future of Screening”. The workshop covered such topics as enhanced security processes, policies and procedures. Agency staff actively engaged in discussions on the inclusion of accessibility and usability elements in the new technologies.

Following the announcement of restrictions on liquids, gels and aerosols in carry-on baggage in August 2006, the Agency received several calls from persons with disabilities expressing concerns as to how these measures would impact the transport of mobility aids. Agency staff initiated consultations with CATSA to discuss its plans to develop and incorporate specific guidance and tips for travellers with disabilities on its Web site. CATSA now provides material on its Web site that address these concerns.

#### → **PASSENGER SECURITY SCREENING PROCESS**

Prior to air travel, the Canadian Electric Wheelchair Hockey Team raised concerns regarding the passenger security screening process and the length of time required for screening given that 10 out of 15 members of the team were persons who use

wheelchairs. The Agency flagged the concerns to CATSA and was later informed that the screening process had gone smoothly and that the group was very pleased with the assistance it had received during the check-in and screening process.

## Collaboration with Canadian Standards Association

The Agency has established a working relationship with the Canadian Standards Association (CSA) that focuses on technical committees responsible for specific standards. Currently, the Agency is working with the CSA on the Accessible Design for the Built Environment Standard (B651) and the Design for Aging Standard (B659). The B651 standard deals with the technical requirements that make buildings and other facilities accessible and safe for persons with physical, sensory or cognitive disabilities. For its part, the B659 standard is currently under review in preparation for a new edition. This standard provides a design and evaluation framework for products, services and environments that meet the needs of an aging population, while taking into account other important factors such as utility, marketability and economic value to the producer and user. The Agency will pursue its collaborative work with the CSA in 2007.

## Communicating with Canadians

In 2006, the Agency continued to focus efforts on enhancing communication between persons with disabilities, travel agents, tour operators and carriers to ensure that necessary services are identified at the time of reservation and communicated to the carrier.

The Agency responded daily to inquiries from the general public about accessible transportation, on topics ranging from how to register as a person with a disability and the availability of accessible ground transportation, to in-flight damage to wheelchairs and service animal certification.

As well, the Agency continued to be an active participant in efforts to organize the 11th International Conference on Mobility and Transport for Elderly and Disabled Persons (TRANSED) to be hosted by Transport Canada in Montréal in 2007. The Agency will play a key role in showcasing Canadian accomplishments in the field of accessible transportation to other transportation professionals and consumers from around the world.

The Agency was a contributor to the Government of Canada's annual report on the progress that has been made on disability issues, entitled *Advancing the Inclusion of Persons with Disabilities 2006*. The report provides a brief description of the Agency's work and portrays it as a leading organization in the removal of barriers to the mobility of persons with disabilities.

The organization was also present at major events such as the People in Motion trade show that took place in Toronto in June 2006. Agency staff responded to queries from the general public at the event and had the opportunity to increase awareness of the organization's mandate and accessibility issues.

Finally, Canadians continued to be informed on accessibility issues and Agency decisions in 2006 via the corporate Web site, the distribution of nearly 12,000 copies of various newsletters, reports and brochures, as well as news releases and media coverage.

## Cases before the courts

### *Supreme Court of Canada: Cases decided in 2006*

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

Court File No.: 31397

Application for leave to appeal the Federal Court of Appeal judgment dated February 6, 2006 regarding VIA Rail's meal distribution policy. The application for leave to appeal was dismissed with costs by the Supreme Court of Canada on August 3, 2006.

*Supreme Court of Canada: Cases pending in 2006***Council of Canadians with Disabilities v. VIA Rail Canada Inc.**

Court File No.: 30909

Appeal of Federal Court of Appeal judgment dated March 2, 2005 relating to the appeal of Agency Decision Nos. 175-AT-R-2003 and 620-AT-R-2003 wherein the Agency determined that certain aspects of VIA Rail Inc.'s Renaissance passenger rail cars posed undue obstacles to the mobility of persons with disabilities and ordered corrective measures. Heard by the Supreme Court of Canada on May 19, 2006. Judgment reserved.

*Federal Court of Appeal: Cases decided in 2006***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*. By judgment dated January 13, 2006, the Federal Court of Appeal allowed the appeal, set aside the decision of the Agency and referred the matter back to the Agency so that it may determine whether the appellant, as a person with a disability, has encountered an undue obstacle to her mobility.

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

Court File No.: A-277-05

Appeal of Agency Decision No. 115-AT-R-2005 dated March 3, 2005/Order T-582-05 of the Federal Court of Appeal concerning the question of whether VIA Rail's meal distribution policy constituted an undue obstacle to the mobility of the respondent. By judgment dated February 6, 2006, the Federal Court of Appeal allowed the appeal and set aside the decision of the Agency in so far as it relates to VIA Rail's meal distribution policy.



# Air Transportation

## Air Travel Complaints

Air carriers operating publicly available services within or to and from Canada are required to publish a tariff, setting out their terms and conditions of carriage and all of their fares, rates and charges.

The Air Travel Complaints Program attempts to informally resolve travellers' complaints about air carriers in a manner consistent with their tariffs, Canadian law and international conventions. If, at the end of the informal process, a complainant believes that the carrier has not respected its legal obligations or that the carrier's tariff is not clear or reasonable, that person may have recourse to the Agency's formal complaints process. When complaints involve issues under the jurisdiction of other government organizations such as Transport Canada or the Canada Border Services Agency, they are forwarded to the appropriate organization for direct response to the complainant.

In 2006, the Air Travel Complaints Program dealt with unresolved issues from previous years and received 1,079 new complaints regarding Canadian and foreign air carriers. The Agency referred 549 of these new complaints directly to the air carriers for resolutions as dissatisfied travellers had not provided them with the opportunity to address their issues. These complainants were advised that if the carrier failed to respond to their complaint within a reasonable time frame or if they remained dissatisfied with the carrier's response, they could request that their complaint be further investigated by the Agency. During the year, 445 such complaints were resolved directly between the traveller and the air carrier.

The Agency investigated 683 complaints received from travellers who, having tried to resolve their complaint with their air carrier, remained dissatisfied and turned to the Agency for assistance.

### → CLIENT SATISFACTION

In 2006, Agency staff closed a near-record number of air travel complaints it investigated (800 compared to 679 in 2005). In 74.3 percent of these cases, representing 594 applications,

complainants advised that they were either fully or partially satisfied with the results obtained on their behalf, which compares very favourably to the satisfaction rate of 62.1 percent obtained in 2005.

## Complaints investigated about Canadian air carriers

The total number of complaints investigated about Canadian air carriers decreased from 501 in 2005 to 476 in 2006, a drop of five percent. During the year, complaints were investigated concerning some 20 different Canadian carriers, ranging from large companies such as Air Canada and WestJet, to smaller ones such as Air Satellite and Calm Air.

The number of complaints investigated about Air Canada increased slightly in 2006, with 372 complaints investigated compared to 345 in 2005. On the other hand, the number of complaints investigated about Air Transat and WestJet decreased when compared to 2005. For Air Transat, the number of complaints fell from 38 in 2005 to 26 in 2006, while the comparable numbers for WestJet were 22 complaints in 2005 and 18 in 2006. Skyservice remained at approximately the same level, with 27 complaints in 2005 versus 26 in 2006. The Agency investigated more complaints against CanJet in 2006, rising to nine from only two in 2005. Sunwing, a new carrier in the Canadian market, had five complaints against it investigated during the year. The number of complaints investigated about Zoom increased slightly in 2006, rising to 12 from nine in 2005.

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

**TABLE 1 : COMPLAINTS INVESTIGATED ABOUT CANADIAN AIR CARRIERS**

	2005	2006
Air Canada (including Jazz)	345	372
Skyservice	27	28
Air Transat	38	26
WestJet	22	18
Zoom	9	12
CanJet	2	9
Sunwing <sup>1</sup>	--	5
Other <sup>2,3</sup>	58	6
<b>Total</b>	<b>501</b>	<b>476</b>

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

<sup>1</sup> Sunwing is a new carrier.

<sup>2</sup> Includes companies whose numbers are too small to merit separate identification.

<sup>3</sup> Does not include statistics when no specific carrier is identified.



## Complaints investigated about foreign air carriers

In 2006, the Agency investigated complaints about some 60 different foreign air carriers from more than 25 countries, ranging from the United States, Russia, the United Kingdom and France to Kuwait and Singapore. The total number of complaints investigated concerning foreign air carriers increased by 35.3 percent, from 153 in 2005 to 207 in 2006.

European air carriers were collectively the subject of more investigated complaints than those of any other geographical area outside of Canada:

- There were 21 complaints investigated about British Airways, an increase of 110 percent from the 10 complaints investigated about the same company last year;
- Air France and Alitalia were the subject of the most complaints investigated in 2006 with 30 and 31 respectively, compared to only six for both air carriers in 2005;
- There were nine complaints about the Netherlands' KLM, up slightly from seven in 2005; and
- Six complaints were investigated about Lufthansa, compared to three in 2005.

### → **A CANCELLATION PENALTY FOR WRONGLY ISSUED TICKETS?**

A father purchased round-trip tickets for his wife and daughter for Calgary to Bangkok, Thailand, on Japan Airlines (JAL) at a total cost of \$3,340.

However, the tickets issued were for travel to Manila, Philippines. The error was quickly brought to the attention of the travel agent who issued new tickets to Bangkok for travel on United Airlines at a cost of \$3,345.90 on the

promise from JAL that they would waive the cancellation penalty fee. When the claim for a refund of the original wrongly issued tickets was processed, JAL retained \$1,420 as a cancellation penalty. All efforts to obtain a full refund were in vain. The man turned to the Agency for assistance. Staff was successful in convincing the carrier that a penalty was inappropriate under these circumstances and JAL finally refunded the \$1,420.

**TABLE 2 : COMPLAINTS INVESTIGATED ABOUT FOREIGN AIR CARRIERS**

	2005	2006
Air France	6	30
Alitalia	6	31
British Airways	10	21
KLM	7	9
United Airlines	5	10
American Airlines	7	8
Royal Air Maroc	4	7
Lufthansa	3	6
BWIA	11	5
Cubana	7	2
Delta	3	4
US Airways	7	6
America West	5	5
Cathay Pacific	4	2
Other <sup>1</sup>	68	61
<b>Total</b>	<b>153</b>	<b>207</b>

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

<sup>1</sup> Does not include statistics when no specific carrier is identified.

On a per country basis, and not surprisingly given their share of the transborder market, there were more complaints investigated against American air carriers (33) than those of any other country. However, no single American carrier was the subject of as many complaints as the top three European carriers.

- United Airlines was the subject of the most complaints at 10, up from five in 2005;
- There were eight complaints about American Airlines, up slightly from seven in 2005;
- US Airways was third with six complaints, compared to seven in the previous year; and

- Five complaints were investigated about America West, the same number as in 2005.

As for air carriers from other parts of the world, there were seven complaints investigated about Morocco's Royal Air Maroc, up from four in the previous year, followed by BWIA with five complaints compared to 11 in the previous year.

## Categories of complaints received in 2006

Individual complaints received by the Air Travel Complaints Program do not necessarily deal with one issue but can contain multiple issues. In this regard, the Program received complaints that dealt with 2,899 issues in 2006 as compared to 3,475 in 2005 (a decrease of 16.6 percent). The top four categories of complaints raised by the travelling public were quality of service, flight disruptions, baggage and ticketing. Quality of service issues, which comprise 38.2 percent of the total number of issues, dropped from 1,529 in 2005 to 1,107 issues in 2006, representing a 27.6 percent decrease. During the same period, complaints concerning flight disruptions, representing 16.5 percent of the total number, went from 597 to 478, a decrease of 20.0 percent. Baggage issues, comprising 15.4 percent, dropped to 446 from 536, a decrease of 16.8 percent, while ticketing issues, representing 8.3 percent of the total number of issues, increased by 5.2 percent to 242 from 230.

Table 3 reflects the number of all issues raised per category in the complaints received by the Air Travel Complaints Program.

**TABLE 3 : CATEGORIES OF COMPLAINTS — ALL AIR CARRIERS**

	2005	2006
Quality of Service	1,529	1,107
Flight disruptions	597	478
Baggage	536	446
Ticketing	230	242
Reservations	134	180
Refusal to transport	79	108
Safety	116	108
Denied boarding	92	94
Frequent flyer program	77	64
Other	85	72
<b>Total</b>	<b>3,475</b>	<b>2,899</b>

**TABLE 4 : CATEGORIES OF COMPLAINTS –  
MAJOR CANADIAN AIR CARRIERS (2006)**

	Air Canada (incl. Jazz)	Air Transat	Skyservice	WestJet	Other <sup>1</sup>
Quality of service	654	41	67	23	54
Flight disruptions	259	14	22	19	33
Baggage	239	14	15	9	17
Ticketing	127	12	5	5	18
Reservations	86	2	8	3	12
Safety	63	5	17	7	6
Denied boarding	63	1	0	0	3
Refusal to transport	48	6	6	1	6
Frequent flyer program	60	0	0	0	2
Other	50	2	3	3	7
Totals	1,649	97	149	70	158

<sup>1</sup> Would include Zoom, CanJet and Sunwing.

→ **A LONG-AWAITED REFUND  
FOR A LOST BAG**

Upon his arrival in Guyana from Toronto, a traveller discovered that one of his two checked bags was missing. He immediately completed a baggage claim form and a Property Irregularity Report with his carrier, BWIA West Indies Airways. Eight weeks later, the traveller received a letter from BWIA stating that it had

cancelled his claim because, according to its records, the bag had been returned. After three months of trying to convince the carrier otherwise, he asked the Agency for assistance. As a result of the Agency's intervention, BWIA ultimately settled the claim by issuing a cheque for \$1,074 to the man who was quite pleased with this outcome.

## Tariffs

Air carriers operating a publicly available domestic air service are required to publish a tariff, setting out their terms and conditions of carriage and all of their fares, rates and charges. Generally, air carriers operating international services to and from Canada must both publish and file their tariffs with the Agency. However, carriers operating international air services under the terms of Canada's bilateral agreements with the United States, the United Kingdom and Germany, are not required to file fares and rates but would continue to file the general terms and conditions of carriage. Upon application, the Agency may also exempt charter carriers from having to file their international charter rates.

Agency staff reviews international air carrier tariffs and amendments to ensure they are consistent with Canadian law and the applicable bilateral agreements. In 2006, the Agency received 23,333 tariff submissions from air carriers proposing to amend or add fares, rates, or terms and conditions of travel to their international tariffs on statutory notice. In addition, the Agency received 8,872 special requests to amend tariffs on other-than-statutory notice. Ninety-eight percent of the tariff submissions were received and processed electronically.

Tariffs that constitute the contract of carriage between the passenger and the carrier must be applied as written. While there is a slight variation in language in the governing legislation between domestic and international services, tariffs generally must be reasonable and not unduly discriminatory. The Agency will accept and investigate complaints when persons or other carriers believe that a carrier has failed to apply its tariff or provisions of the tariff are deemed unreasonable or unduly discriminatory.

In this regard, in 2006 the Agency completed 70 investigations of which 20 related to allegations that a carrier had failed to respect its tariff and 50 to allegations that a carrier's tariff was unjust or unreasonable. Agency staff also resolved 25 inter-carrier disputes primarily involving issues related to the reasonableness of prices and referred 22 tariff applications to Agency Members for a formal decision.

## Importance of check-in times for travellers and air carriers

In two decisions issued in 2006, the Agency illustrated the importance for travellers to arrive in sufficient time at the airport for their flight and for air carriers to clearly set out check-in time limits in their tariffs.

On January 31 the Agency rendered a decision with respect to Air Canada's refusal to transport a man's two sons on a flight from Montréal to Edmonton. The Agency found that the carrier's tariff only "recommended" that passengers present themselves for check-in 60 minutes prior to departure, and that passengers must present themselves at the boarding gate at least 25 minutes prior to the scheduled flight departure. Given

that a “recommendation” is not a requirement, the carrier did not have the right to cancel those passengers’ reservations under the circumstances of this case, unless they failed to present themselves at the boarding gate at least 25 minutes prior to the flight’s departure. Therefore, the Agency ordered Air Canada to pay an amount of \$1,482.92 to the complainant, which represented the value of the alternate tickets that he had purchased from another carrier to return his sons to Edmonton.

In a second decision rendered on September 28, the Agency found that Skyservice’s tariff was silent with respect to mandatory check-in time limits. Therefore, the carrier had, by its refusal to check in and transport passengers who allegedly arrived late at the check-in counter, applied terms and conditions of carriage that were not set out in its tariff. Following its analysis of the case, the Agency ordered Skyservice to pay a total of nearly \$3,000 for its refusal to transport the party of four from Cancun, Mexico, to Vancouver, British Columbia.

## Liability for the carriage of animals

On June 1, the Agency ruled in the matter of the death of a pet dog while being transported by Air Canada from Smithers, British Columbia, to Winnipeg, via Vancouver. In its decision, the Agency stated that exclusions from liability for the carriage of animals are not unreasonable given the inherent fragility of living creatures and the occasional hardships associated with the carriage of animals in the bellyhold of an aircraft. However, the Agency stated that an air carrier should provide adequate notice of its exclusion from liability for the carriage of animals, especially where it disclaims any liability, to allow persons to make informed choices respecting the carriage of animals.

The Agency’s decision required Air Canada to revise its tariff to set out the means by which it provides such notice to passengers. Such notice must accurately reflect Air Canada’s limitations of liability and be set out in clear and unambiguous language.

## Enforcement

To ensure compliance with Canadian law, the Agency’s enforcement staff conduct periodic inspections of Canadian-based licensees and passenger terminals that fall under its purview. Enforcement staff also investigate allegations that companies and individuals are operating in contravention of the *Canada Transportation Act* and related regulations. Sanctions for non-compliance range from the assessment of an administrative monetary penalty, cease-and-desist orders, formal reprimands, licence suspensions and cancellations, to criminal prosecution.

An administrative monetary penalty is the sanction of choice in most cases. Except in cases where carriers operate without a licence, insurance or an appropriate aviation document, the Administrative Monetary Penalty Program provides a formal warning for a

first offence to give air carriers and terminal operators the opportunity to take corrective action. A subsequent contravention of the same provision of the Act or regulation is subject to a maximum penalty of \$5,000 for an individual and \$25,000 for a corporation.

In 2006, 265 on-site inspections of Canadian-based air carriers and 24 inspections of passenger terminal operators were conducted. Enforcement staff also conducted 26 investigations of carriers or individuals suspected of operating illegal air services in Canada, and identified 15 contraventions. Two formal warnings were issued, one of which is currently under review, and 10 notices of violation to air carriers operating publicly available air services without holding a valid licence or a valid Canadian aviation document. Of the 40 informal warnings issued for minor contraventions, 35 were issued to air carriers and five to passenger terminal operators.

## Charges and Surcharges

### Fuel surcharges

Recognizing the challenges caused by fluctuations in fuel prices, the Agency approved a series of fuel surcharges for international air carriers in 2006. However, conscious of the impact of surcharges on the travelling public, the Agency will continue to monitor air carrier's surcharges as they relate to jet fuel prices in 2007.

### Firearms charge

In June 2006, Air Canada began charging \$50 per firearm to carry passengers' firearms. The Agency received several complaints about this new charge and Air Canada's conditions governing the handling of firearms. Shortly thereafter, the Agency suspended the application of the charge on transborder and international flights pending determination of the matter. However, the Agency did not have jurisdiction to similarly suspend the charge on domestic flights.

In a decision rendered on November 3, 2006 the Agency dismissed the complaints. The Agency was of the opinion that the carriage of firearms requires additional and special handling procedures. In addition, these procedures are presumed to be reasonable given that they flow from legislative requirements, namely the *Firearms Act* and the *Canadian Aviation Security Regulations*. Furthermore, the Agency determined that Air Canada's terms and conditions were not discriminatory since the charge applied equally to all passengers carrying firearms.

In making its decision, the Agency also indicated that, while a balance must be struck between the rights of the passengers and the air carriers' statutory, commercial and operational obligations, air carriers should, in general, have the flexibility to establish their



terms and conditions of carriage and to price their services as they see fit, subject to legislative or regulatory constraints.

## Pricing

Upon complaint, the Agency may conduct an investigation and order certain remedial action against an air carrier if it determines that:

- passenger fares or cargo rates published or offered on a non-competitive route within Canada are unreasonable, or
- the range of fares or rates offered on such a route is inadequate.

In 2006, the Agency received one complaint concerning Air Canada's fares for travel between St. John's and Gander, Newfoundland and Labrador. The Agency expects to complete its investigation of this complaint and to render its decision in 2007.

## 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 2006, the Agency processed 1,355 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.

**TABLE 5 : AIR CARRIERS BY NATIONALITY**

	Carriers holding Agency licences as of December 31, 2005	Carriers holding Agency licences as of December 31, 2006
Canadian	814	772
U.S.	691	678
Other	128	130
Total	1,633	1,580



**TABLE 6 : LICENCE AUTHORITIES HELD BY NATIONALITY**

	Canadian					United States	Other	Total
	Aircraft Type							
Services	Small	Medium	Large	All Cargo	Total			
Domestic	750	19	14	32	815			815
Non-scheduled international	335	18	14	24	391	668	102	1,161
Scheduled international	14	31	103	66	214	48	73	335
Total December 31, 2006 <sup>1</sup>								2,311

<sup>1</sup> For comparison, the total on December 31, 2005 was 2,324.

**TABLE 7 : AIR LICENSING ACTIVITIES**

	Completed in 2005	Completed in 2006
Applications for:		
New licences	200	224
Amendment of licences	98	86
Suspensions	202	213
Cancellations	67	64
Reinstatements	36	51
Exemptions/Rulings	193	204
Other	4	2
Total	800	844

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. For example, air carriers with seasonal operations to hunting or fishing lodges often make such requests.

**TABLE 8 : LICENSING ACTIVITIES INITIATED BY THE AGENCY**

	Completed in 2005	Completed in 2006
Suspensions	315	281
Cancellations	125	128
Reinstatements	122	102
Total	562	511

Of the 224 applications for new licences completed in 2006, 11 were denied, 31 were withdrawn and 182 resulted in a licence being issued. Of those 182, 14 licences were issued to the following seven Canadian applicants for the operation of an air service using medium or large aircraft (having a seating capacity of at least 40 passengers):

- Air Canada: Licence for scheduled international services between Canada and Algeria (large aircraft).
- Air Transat: Licence for scheduled international services between Canada and Spain (large aircraft).
- Harmony Airways: Licences for scheduled international services between Canada and Australia and Canada and Fiji (large aircraft).
- Porter Airlines: Licences for domestic, non-scheduled international and scheduled international services between Canada and the United States (medium aircraft).
- Skyservice: Licences for scheduled international services between Canada and Portugal, Canada and Italy and Canada and Ireland (large aircraft).
- Sunwing Airlines: Licences for scheduled international services between Canada and the Dominican Republic, Canada and Jamaica and Canada and the United States (large aircraft).
- WestJet: Licence for scheduled international services between Canada and the Bahamas (large aircraft).

The Agency also granted 24 exemptions to section 59 of the *Canada Transportation Act*, which prohibits selling services prior to holding a licence.

## Canadian ownership and control

In 2006, the Agency completed 79 reviews to verify that Canadian applicants proposing to operate domestic or international air services, or licensees already operating such services, met Canadian ownership requirements. To be considered Canadian-owned and controlled, an air carrier must be incorporated in Canada, must have at least 75 per cent of its voting interests owned and controlled by Canadians, and must be controlled in fact by Canadians.

Seven reviews involved major investigations because the companies had complex ownership structures, or there were non-Canadian minority shareholders or business associates who might have exercised control over the applicant. The Agency denied two applicants on the basis that they were not Canadian.

One of the reviews undertaken by the Agency involved the examination of the proposed corporate restructuring of Canada's largest regional carrier, Jazz Air Limited Partnership, as represented by its general partner, Jazz Air General Partner, and carrying on business as Air Canada Jazz. The Agency issued a decision concluding that it was satisfied that Air Canada Jazz would be Canadian subsequent to the proposed restructuring which involved an initial public offering of Jazz Air Income Fund, an unincorporated open-ended trust established under the laws of the Province of Ontario. The proceeds of the initial public offering were used to indirectly acquire an interest in the regional air carrier, with ACE Aviation Holdings continuing to hold a controlling interest in Air Canada Jazz.

## Financial fitness

Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats must meet financial requirements according to the *Canada Transportation Act* and the *Air Transportation Regulations*. Applicants must prove they have enough liquid funds to cover all start-up, operating and overhead costs for 90 days. These requirements are designed to ensure that applicants are financially fit and have a reasonable chance of success, which minimizes disruptions in service and protects consumers. In 2006, the Agency completed four such financial fitness reviews.

## 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 obtain an Agency program permit or authorization to operate charter flights from Canada to a foreign country. For resalable charter flights which involve the carriage of Canadian originating passengers, the Agency also ensures that advance payments are protected. This is done by way of a letter of credit or agreement of guarantee that requires the prompt refund of all advance

payments received from tour operators and charterers should the air carrier fail to perform the flights.

Sometimes, carriers are asked to provide a flight on short notice. Because Agency authorization is needed before flight departure, the Agency offers a 24-hour telephone service to deal with urgent cases outside its normal business hours. In 2006, the Agency handled 354 situations under this 24-hour service, 118 of them requiring approval by Agency Members.

### → ALWAYS THERE!

Carriers relied heavily on the Agency's 24-hour service to ensure the safe return of Canadian citizens during the crisis in Lebanon in July 2006. Working closely with Transport

Canada, this service allowed the Agency to grant on very short notice the authorities and exemptions necessary to allow carriers' operations on behalf of the Government of Canada.

**TABLE 9 : CHARTER PERMITS ISSUED  
(CANADIAN AND FOREIGN ORIGINATING)**

	2005	2006
Passenger non-resaleable entity charters	146	186
Cargo non-resaleable entity charters	301	289
Passengers resaleable	1,478	1,237
Total	1,925	1,712
Additional statistics		
Exemptions granted to the charter regulations	1,222	962
Amendments to charter permits	680	482

**TABLE 10 : CHARTER FLIGHT NOTIFICATIONS**

	2005	2006
Transborder charters		
Canadian originating (Non-resaleable passenger)	611 <sup>1</sup>	553
Canadian originating (Cargo)	173	85
United States originating (Passenger)	432	522
United States originating (Cargo)	548	356
Foreign originating (Passenger)	161	138
Foreign originating (Cargo)	6	5
<b>Total</b>	<b>1,931</b>	<b>1,659</b>

<sup>1</sup> Restated to include post-facto flight notifications received after the publication of the 2005 Annual Report.

## Bilateral air transport agreements

Scheduled international air services between countries are generally governed by bilateral air transport agreements and other arrangements between countries. These agreements form the legal basis for regulating scheduled international air services with other governments and establish traffic rights for each country. Although such agreements generally cover scheduled international air services, some contain provisions related to non-scheduled (charter) air services.

The Government of Canada negotiating team — comprised of officials from Transport Canada and the Agency and led by the Department of Foreign Affairs and International Trade — participate in negotiating air transport agreements with other countries. Negotiations can include discussions about the cities that may be served, the capacity that may be offered, pricing rules, as well as operational, conduct-of-business and administrative clauses. Once an agreement is established, the Agency administers the provisions related to economic licensing and regulation within its jurisdiction.

In 2006, the Agency was responsible for administering 76 bilateral air transport agreements and arrangements. The Agency also participated in negotiations with 12 countries. These included successful negotiations to expand routes and other rights with the United Kingdom, Brazil and Portugal. For the first time ever, agreements were established with Algeria, Croatia and Serbia. Successful negotiations were also held with Singapore and Israel.

Canada negotiated an “open skies”-type agreement with the United Kingdom, allowing carriers of each country not only to serve the other country with unlimited flights, but also to exercise fifth freedom traffic rights by carrying origin and destination passengers and cargo between the other country and third countries. The new agreement also removes restrictions on price-setting for third country services, enabling the air carriers to better respond to market demand. The agreement is expected to result in increased air services to the benefit of travellers, air carriers, shippers, and trade and tourism interests.

Negotiations with Brazil resulted in expanded traffic rights which, in addition to confirming the ability of Canadian and Brazilian air carriers to carry sixth freedom traffic, provide for new fifth freedom traffic rights and additional capacity for all-cargo services.

**TABLE 11 : THE FIRST SIX FREEDOMS OF THE AIR<sup>1</sup>**

<b>First Freedom</b> Right to fly across the territory of the other country without landing.	<b>Fourth Freedom</b> Right to carry traffic (passengers or cargo) from the other country to the home country of the air carrier.
<b>Second Freedom</b> Right to land in the other country for technical or non-traffic purposes, such as for refuelling or maintenance.	<b>Fifth Freedom</b> Right to carry traffic (passengers or cargo) between the other country and a third country, as an extension of a service to or from the home country of the air carrier.
<b>Third Freedom</b> Right to carry traffic (passengers or cargo) from the home country of the air carrier to the other country.	<b>Sixth Freedom</b> Right to carry traffic (passengers or cargo) between the other country and a third country via the home country of the air carrier.

<sup>1</sup> The fundamental building blocks of air transport agreements are the “traffic rights” exchanged between governments in those agreements, commonly known as the “Freedom of the Air”.

Canada established a new Air Transport Agreement with Portugal that allows for a significant expansion of air services between the two countries. Designated air carriers of each country now have access to all destinations in the other country with no limitations on the frequency of service offered. Air carriers also enjoy greater flexibility with respect to the prices they charge for their services in international markets. This agreement allows air carriers to better meet the needs of travellers and shippers in the Canada-Portugal

tugal market, and helps Canada build stronger commercial ties and trade links with Portugal and Europe as a whole.

Canada's first air transport agreements with Algeria, Croatia and Serbia permit new direct air services that should benefit passengers, shippers, air carriers and airports. Under all three of these new agreements, designated air carriers will be able to operate using their own aircraft and provide code-sharing services with other air carriers. These agreements also include flexible pricing regimes and strong safety and security provisions.

Air carriers continued to expand their opportunities through code-share arrangements, whereby one air carrier sells transportation under its own name on flights operated by other air carriers. In other cases, air carriers sought Agency approval to be able to lease aircraft with flight crews from other air carriers.

In addition to approving marketing arrangements, the Agency can also facilitate competitive opportunities by granting permission to operate extra flights and by considering temporary extra-bilateral authorities to operate services not provided for under bilateral air agreements or arrangements.

In 2006, the Agency issued public decisions and orders concerning 141 applications relating to bilateral air agreements and arrangements, 87 of which concerned code-sharing or the leasing of aircraft with flight crews. Of the total number of applications addressed, 54 dealt with applications for extra-bilateral authorities involving such matters as code-sharing, the provision of fifth-freedom services, extra capacity and the provision of air services to specific cities.

## Discontinuance or reduction of services

Under section 64 of the *Canada Transportation Act*, an air carrier must give notice of its intention to discontinue or reduce domestic air services when:

- the discontinuance would result in only one or no air carrier serving a point;
- an air carrier proposes to reduce the frequency of an air service to less than one flight per week, so that only one or no air carrier would serve that point at least once per week; or
- the discontinuance of a year-round, non-stop scheduled air service between two points in Canada would reduce the total passenger-carrying 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 which case, the notice period is 30 days. An air carrier may also ask the Agency to reduce the



notice period. In addition, the *Canada Transportation Act* 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 resulting impact.

If, after receiving a written complaint, the Agency determines that a licensee did not give proper notice, the Agency may order that the air service be reinstated for up to 60 days. However, a licensee that has given proper notice cannot be prevented from discontinuing or reducing air service.

In 2006, the Agency addressed four matters concerning notice provisions:

- Provincial Airlines gave notice of its intention to discontinue service between St. John's, Gander, Deer Lake, and Stephenville, Newfoundland and Labrador, and Halifax, Nova Scotia, effective March 19, 2006;
- CanJet was granted a reduction in the notice period with respect to the proposed discontinuance of its year-round non-stop scheduled air service between St. John's, Newfoundland and Labrador, and Moncton, New Brunswick, effective September 10, 2006;
- The Agency considered an application by Air Canada, on behalf of itself and Air Canada Jazz, for a ruling with respect to the suspension of its operations at the Toronto City Centre Airport. In its decision, the Agency found that the Toronto-Ottawa year-round, non-stop scheduled service offered by Air Canada was not being discontinued given that it continued to offer a Toronto-Ottawa year-round, non-stop scheduled service from Toronto-Lester B. Pearson International Airport;
- The Agency also considered an application by Air Canada Jazz for an exemption from section 64 of the Act with respect to the transfer of its entire operation to Jazz Air LP. In its decision, the Agency found that section 64 did not apply as there would be no interruption of service.

The Agency received two complaints regarding discontinuance of services. Because section 64 of the Act did not apply, all complainants received a letter from the Agency explaining the notice of discontinuance provisions.

## NAV CANADA charges

The Agency is the appeal tribunal for new or revised service charges proposed by NAV CANADA, a private sector, non-share capital corporation which provides air navigation services across the country.

Appeals may be made on one or more of the following grounds:

- one or more of the charging principles have not been observed in establishing the charge;
- non-compliance with either the notice or announcement requirements;
- the new or revised charge set out in an announcement is different from the charge as proposed in the notice; and
- based on reasonable and prudent projections, the total annual revenue to be generated by the announced charge is greater than the total annual revenue to be generated by the charge as proposed in the notice.

On April 18, 2006, NAV CANADA filed with the Agency an Announcement of Revised Service Charges. Users, groups of users and representative organizations of users of Canada's air navigation services then had 30 days to file any appeals with the Agency. On May 16, the Canadian Owners and Pilots Association and the Helicopter Association of Canada each filed an appeal pursuant to the *Civil Air Navigation Services Commercialization Act*. The appeals were in respect of a new \$10 daily charge that would have been applied to aircraft weighing three tonnes or less using one of seven major international airports in Canada.

The Agency dismissed the appeals stating, among other matters, that the *Civil Air Navigation Services Commercialization Act* does not prohibit NAV CANADA from charging the new daily charge in addition to the existing annual fee. Furthermore, there was no evidence in the appeals indicating that NAV CANADA had failed to observe the charging principles, nor had any evidence been provided to support the view that the new daily charge represented "double billing".

## Communicating with Canadians

From time to time, Agency members and staff are invited to make presentations to various audiences concerning the Agency's role and mandate. Most notable in 2006 was a general presentation to the local committee responsible for air transportation in the Québec City area, and presentations on the Agency's enforcement role at seminars in Calgary and Halifax, organized by Transport Canada and the Canada Border Services Agency respectively.

Agency representatives also participated in major events and conferences related to air transportation to meet with and exchange views with key stakeholders, including:

- a major outfitting, hunting and fishing show in Montréal;
- Manitoba Aviation Council's annual meeting in Winnipeg;

- annual meeting of the Association québécoise des transporteurs aériens held in Québec City;
- BC Aviation Council conference in Richmond, British Columbia;
- Air Transport Association of Canada's annual general meeting and conference in Victoria;
- Arctic Aviation Experts conference in Winnipeg;
- Global Outlook Conference in Montréal organized jointly by the International Civil Aviation Organization and Airports Council International;
- International Air Cargo Forum and Exposition in Calgary;
- International Air Transport Association Conference in Vancouver; and
- All Canada Show in Minneapolis, Minnesota.

In addition to these outreach activities, the Agency was very active in responding to inquiries from the public, answering more than 7,600 calls through its 1-800 telephone service. In addition, almost 30,000 copies of *FlySmart*, a comprehensive booklet containing tips for air travellers, were distributed to the public and travel agents, an 87.2 percent increase in distribution over 2005. The Agency also had 258 contacts with news media and issued six news releases regarding air transportation during the year.

## Cases before the courts

### *Federal Court of Appeal: Cases pending in 2006*

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

Court File No.: A-658-05

Appeal of Agency Decision No. 388-C-A-2005 dated June 22, 2005 in the matter of a complaint filed by Mohammed Omar Satari concerning the refusal by Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines) to refund certain tickets issued for travel between points in Canada and points outside Canada. Case to be heard by the Federal Court of Appeal in Toronto on January 30, 2007.

# Rail Transportation

## Certificates of fitness

The *Canada Transportation Act* requires that all railways under federal jurisdiction have an Agency-issued certificate of fitness in order to operate. The Agency issues these certificates when it is satisfied that a company proposing to construct or operate a railway under federal jurisdiction has adequate liability insurance. Certified companies are then monitored for continued compliance. The Agency may also vary certificates to reflect changes in railway operations or it may suspend or cancel a certificate.

In 2006, changes were made to the certificates of fitness held by several railway companies:

- Burlington Northern and Santa Fe Railway Company and subsidiaries Burlington Northern (Manitoba) Ltd. and Burlington Northern and Santa Fe Manitoba, Inc. to reflect a change in name to BNSF Railway Company and to provide a more detailed description of the company's current operations;
- RaiLink Canada Ltd. to reflect the sale of its operations in Northern Alberta and the Northwest Territories;
- CSX Transportation Inc. to reflect a change in its operations in the provinces of Ontario and Québec; and
- Corporation of the City of Ottawa carrying on business as Capital Railway to reflect a change in ownership of the railway lines, as well as to include the proposed construction of a north-south light rail transit system from the University of Ottawa to the Barrhaven Town Centre.

For a list of Canada's federally regulated railway companies, refer to Appendix C.

## Construction approval

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

In 2006, the Agency continued its leadership role on the interdepartmental screening committees for Canadian Pacific Railway (CPR)'s proposed relocation of part of the

Montana Subdivision near Milk River, Alberta; a new CPR spur line into a Toyota plant near Woodstock, Ontario; a Canadian National Railway (CN) project for construction of a new spur to serve the harbour at Oshawa, Ontario; and Capital Railway's Ottawa Light Rail Transit Project. Two environmental screening decisions were issued in 2006, allowing the Milk River and Ottawa Capital Railway projects to proceed when assured that the applicant had taken measures deemed appropriate to mitigate any significant adverse environmental impacts.

The Agency is also participating in the environmental assessment of the Pearson AirLink Project in Toronto and the Highway 10 expansion near Sherbrooke, Québec. Monitoring also continued for potential environmental effects of the Calgary Ring Road, Highway 69 twinning between Parry Sound and Sudbury, Ontario, the West Transportation Corridor in Bracebridge, Ontario and various GO Transit expansions in Greater Toronto.

Following assessment approvals, the Agency also made three decisions under section 98 of the Act authorizing the construction of two portions of Capital Railway's project in Ottawa and CPR's Milk River relocation.

## Infrastructure issues

The *Canada Transportation Act* allows federal railways, road authorities, utility companies, and, private landowners to negotiate agreements relating to railway works, operations, and/or services. In 2006, the Agency processed 120 such agreements filed by parties who had conducted their own negotiations related to railway crossings. These agreements have become orders of the Agency.

Where no agreement can be reached, a party may apply to the Agency to assist in reaching a fair and equitable resolution. With respect to these cases, the Agency reached decisions relating to two public road crossings of a railway, two utility crossings, and three private railway crossings.

The Agency completed nine 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.

In 2006, the Agency and the Province of British Columbia successfully negotiated an agreement that authorizes the Agency to apply federal railway crossing laws to British Columbia provincial railways. This agreement follows a similar agreement reached in 2002 between the Minister of Transport and the Province of Ontario that applies federal railway crossing laws to railways under Ontario provincial jurisdiction.

## Railway charges for crossing maintenance and construction

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

*The Guide to Railway Charges for Crossing Maintenance and Construction* was first published on January 1, 2004, and updated on July 1, 2005. It 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 2006, the Agency began an in-depth review of the railway equipment rental rates found in Schedule E of the Guide. This review was ongoing throughout the year and is expected to be completed in 2007.

## 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. The Agency may be asked to determine whether a railway company has complied with this process. Pursuant to subsection 140(1) of the Act, a yard track, siding, spur or other track auxiliary to a railway line is exempt from the prescribed discontinuance process. As a result, the Agency may also be asked to determine whether a specific piece of track is subject to the prescribed process.

In 2006, the Agency did not receive or process any applications for track determinations.

The Agency did, however, receive two notices of discontinuance for the following tracks:

- the CASO Subdivision (jointly owned by CN and CPR) in Ontario between mileage 117.49 (near St. Thomas) and mileage 168.68 (near Fargo); and
- the CPR Kimberly Subdivision in British Columbia between mile 0.1 (near North Star) and mile 16.0 (near Kimberly).

With respect to railway line transfers, the Agency was informed by CN that on January 31, 2006 it had acquired from CSX a 12-mile rail line between Chatham Station and Blenheim Station in Ontario.

CPR also advised that it had transferred, for continued use, the Victoria Subdivision on Vancouver Island (mileages 0.0 to 68.1 and 95.2 to 139.7) to the Southern Railway of British Columbia (formerly known as the Esquimalt and Nanaimo Railway). CPR also transferred its interests in the Willingdon Subdivision (mileage 2.0 to 132.0) to the Province of Alberta pursuant to section 145 of the Act.



## 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 can ask the Agency to set the net salvage value of the line for continued operation. The requesting party must reimburse the Agency for its costs in handling the application. If the railway does not transfer the line after advertising it, it must offer to transfer the line to the federal, provincial, municipal or local government for not more than the net salvage value of the line. Either the railway or the government may ask the Agency to determine the net salvage value at no cost. Governments may use the line for any purpose after taking possession. The Agency received no requests for net salvage value determinations in 2006.

## Transit time agreement

The Agency's role as economic regulator of railways under federal jurisdiction expanded with CN's acquisition of BC Rail in 2004. The purchase of BC Rail, the third largest railway in Canada with 2,300 km of track, increased the size of the federal railway system, and gave the Agency a new monitoring responsibility.

In response to concerns from shippers, the Competition Tribunal set a requirement that the Agency monitor the transit times for CN to deliver railway cars along the former BC Rail lines from northern British Columbia to Vancouver interchanges. Monitoring is required when shippers are using only CN to deliver their goods and when their loads are being switched to competing railways. The Agency must carry out comparative analyses of CN transit times and benchmark BC Rail times from five zones in northern British Columbia to the Vancouver area. Monitoring reports must be submitted on a regular basis to CN, connecting carriers in Vancouver and to the Competition Bureau. In 2006, the Agency issued its third through sixth transit reports which covered periods from July 1, 2005 to September 30, 2006.

## Interswitching

Subsection 128(1) of the Act stipulates that the Agency may make regulations prescribing terms and conditions governing the interswitching of rail traffic. Any person can request a local railway to interswitch its traffic, at a rate provided for in the *Railway Interswitching Regulations*, to a connecting railway company if its point of origin or destination is within the limit of a 30-km radius from an interchange. Subsection 128(5) of the Act requires the Agency to review the Regulations as circumstances warrant, and also at a minimum of five-year intervals.

In 2006, the Agency reviewed the changes to interswitching costs for the railways and determined that no changes were necessary to the existing rates. According to subsec-



tion 128(5) of the Act, the Agency will be conducting a statutory review of these Regulations in 2007.

## Regulatory railway costing

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

As part of the process for setting interswitching rates, the Agency makes visits to railway yards to review interswitching operations. To ensure rates reflect the cost of interswitching traffic at all locations in Canada, in 2006 the Agency visited three yards in British Columbia (CN and CPR Coquitlam, and CN Thornton), one yard in Alberta (CN Clover Bar), and three yards in Manitoba (CN Symington, CPR Winnipeg and CN-CPR Paddington).

## Historical price indices

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

## Western grain revenue caps

Under sections 150 and 151 of the Act, the Agency must determine the maximum revenue entitlement (or revenue cap) and actual revenue for any 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.

On December 29, 2006, the Agency ruled that both CN's and CPR's revenues for the movement of Western grain exceeded their respective revenue caps for the crop year 2005-2006. CN's grain revenue of \$398,438,496 was \$2,700,949 above its revenue cap of \$395,737,547 while CPR's grain revenue of \$396,537,502 was \$1,495,535 above its revenue cap of \$395,041,967.

2005-2006 was the Agency's sixth year for revenue cap determinations, and marked the first time both railways had exceeded the maximum revenue entitlement in the same year. As set out in the Act, the companies are required to pay the excess amounts plus penalties to the Western Grain Research Foundation for research in the industry.

In April 2006, the Agency announced a year-over-year increase of 6.6 percent in the Volume-Related Composite Price Index for the movement of Western grain for crop year 2006-2007. 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. The 6.6 percent increase included an adjustment of 1.2 percent to reflect increased railway hopper car lease costs resulting from the Canadian Wheat Board's lease of about 3,500 hopper cars to CN and CPR.

## Cost of capital

In early 2006, the Agency approved separate cost of capital rates for CN and CPR. The annual rates are used to develop the Volume-Related Composite 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 2006-07, are 8.06 percent and 8.09 percent, respectively. The cost of capital is the return expected and required from an investment in a firm's debt or equity. The Act and applicable regulations recognize it as an established economic cost of railway operations. The cost of capital includes the costs of financing the acquisition of capital assets, namely interest on debt and return on equity. The cost of debt is equal to the interest on related bonds. Measuring cost of equity, or the return that shareholders expect, involves an analysis of various financial models, risk assessment and other technical relationships.

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

## Grain transportation issues

Both during and prior to 2006, Agency staff assisted Transport Canada in assessing the potential impact of the disposal of the government's 12,400-car fleet on the grain revenue cap. On May 4, 2006, the Minister of Transport announced that the Government of Canada would retain ownership of its hopper car fleet.

## Level of service

In 2006, Columbia Recycle Ltd. of British Columbia filed a level of service complaint against CPR regarding the poor rail service it claimed it was receiving. As well, Calgary Metal (1985) Ltd. in Alberta requested that the Agency order CN to fulfill its service obligations for receiving, carrying and delivering ferrous scrap metal from its facility to the destination.

During the processing of these two complaints, the applicants and respondents agreed to attempt resolution of their issues through the Agency's informal mediation process and their formal complaints were put on hold.

In September 2005, the City of Lévis, Québec, filed a level of service complaint against CN for an alleged failure to provide suitable facilities at its Joffre yard in the Charny district, thereby causing noise problems in the surrounding area. The Agency ruled on this matter in 2006 and determined that based on a 2000 Federal Court of Appeal ruling, the Agency did not have the jurisdiction to hear noise complaints. Furthermore, the Agency found that the City of Lévis had no direct connection with CN and was not a party to the contract governing the traffic that was subject to the complaint and, accordingly, dismissed the case.

## Mediation and rail transportation

In 2006, the Agency's mediation services assisted its clients in dealing with a variety of rail infrastructure and level of service issues, some of which are ongoing and some of which have been resolved. These issues included the provision of business services between shippers and carriers, crossing maintenance, grade separation cost apportionment, property damage, noise issues, above-ground valve construction and other safety-related issues.

Parties opting for mediation to resolve their differences in the rail transportation environment included large and small federal and provincial railways, various municipalities and townships, private companies, and several individual producers and private citizens.

With 12 cases in progress at the beginning of the year and 14 new requests during the course of the year, the Agency handled a total of 26 mediation cases regarding rail disputes in 2006. Six cases were resolved and another case was partially settled through

mediation. In five cases, mediation could not proceed as one of the parties was unwilling to participate and two mediation requests were withdrawn. Of the 12 cases pending at year end, eight were ongoing and four had been resolved, but were awaiting fulfilment of the conditions of settlement.

Furthermore, continuing efforts by Agency staff to promote mediation as an alternative to the Agency's existing dispute adjudication function will likely increase the number of disputes referred to mediation in the coming years.

The Agency is improving the way it monitors its performance. A recently completed analysis of rail mediations conducted over the last five years shows that the success rate of cases wherein both parties agree to mediate is over 90 per cent. Twenty-nine of 31 completed mediations were resolved to the satisfaction of both parties. Moreover, over 90 percent of all mediation clients surveyed reported that they were "fully satisfied" with the mediation process.

## Final Offer Arbitration

When shippers and carriers are unable to resolve disputes on their own, they can apply to the Agency for final offer arbitration (FOA), which is a confidential method of settling a dispute through an independent arbitrator or a panel of three arbitrators. Prior to referring a case to an arbitrator, the Agency ensures that the shipper's request for FOA is complete and that the shipper has notified the carrier of its intention to use FOA. The Agency may also assist the parties in selecting an arbitrator and may provide administrative, legal and technical advice to the arbitrator when requested.

In 2006, the Agency referred five cases to an arbitrator for settlement. As applications for FOA are confidential, no details of the applicants or carriers may be revealed unless all parties agree.

## Communicating with Canadians

In 2006, the Agency carried out communication activities focussed on the railway industry, its users and Canadians who might be affected by railway operations.

Events attended by Agency staff during the year included the World Congress on Railway Research, the Canadian Industrial Transportation Association Annual Conference and four municipal trade shows in Ontario, Québec and Manitoba. On the industry side, meetings were held with Prince Rupert Grain Ltd. and Consolidated Thompson-Landmark Goldmines Ltd. among others.

In May 2006, the Agency was also the focus of a half-day session at the annual conference of the Canadian Transportation Research Forum in Québec City.

## Cases before the courts

### *Federal Court of Appeal: Cases discontinued in 2006*

#### **Canadian National Railway Company v. Luscar Ltd.**

Court File No.: A-219-06

Application for judicial review of the referral made by the Canadian Transportation Agency to an arbitrator on April 26, 2006, of the matter submitted by Luscar Ltd. to the Agency for final offer arbitration pursuant to subsection 162(1) of the Act on April 11, 2006. On June 19, 2006, the Applicant filed its Notice of Discontinuance with the Court.

### *Federal Court of Appeal: Cases pending in 2006*

#### **Canadian Pacific Railway Company v. Canadian Transportation Agency**

Court File No.: A-160-06

Appeal of Agency Decision No. 755-R-2005 dated December 30, 2005 that set out the Agency's determination of Canadian Pacific Railway's revenues for the movement of Western grain for the crop year 2004-2005. A hearing date is to be set by the Federal Court of Appeal.

### *Petitions to the Governor in Council: Cases pending in 2006*

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

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

# Marine Transportation

## *Coasting Trade Act*

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

This Act safeguards the interests of owners and operators of Canadian registered vessels, while offering the flexibility to allow access to the specialized ships available in the international fleet in cases where no suitable domestic option is available.

In 2006, the Agency carried over three applications and received 108 new applications for the use of foreign vessels in Canadian waters. Of these, 95 were approved, two were denied and 10 were withdrawn. Four applications were still outstanding at year end.

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

## *Pilotage Act*

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

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



In 2006, rulings were issued on two pilotage tariff proposals that were the focus of objections and ensuing Agency investigations, and a third such case was in progress at year end.

The Laurentian Pilotage Authority published a tariff proposal on November 5, 2005. Objections to this proposal were filed by the Shipping Federation of Canada and jointly by the Canadian Shipowners Association and Chamber of Maritime Commerce. On March 31, 2006, the Agency rendered its decision, recommending that the tariff be implemented, as it was not prejudicial to the public interest. Reasons for the decision were later issued on April 6, 2006.

The Canadian Shipowners Association (CSA) filed an objection with the Agency regarding the Great Lakes Pilotage Authority tariff proposal of May 20, 2006. On October 13, 2006, the Agency issued its decision recommending the proposed increases be implemented, as they were not prejudicial to the public interest. On November 13, 2006, the CSA filed an application with the Federal Court of Appeal for leave to appeal the Agency ruling issued on October 13, 2006. The outcome of the application for leave to appeal was not known at year end.

On November 6, 2006, objections to a Laurentian Pilotage Authority tariff proposal published on October 7, 2006 were filed by the Shipping Federation of Canada and the Canadian Shipowners Association. At year end, the Agency was in the midst of an investigation and a ruling will be issued in 2007.

In other related files, the Pacific Pilotage Authority published a tariff proposal on July 29, 2006 and the Atlantic Pilotage Authority published a tariff proposal on October 7, 2006. No objections were filed in respect of these tariff proposals.

Finally, on June 15, 2006, the Governor in Council rescinded an Agency decision regarding a Laurentian Pilotage Authority tariff proposal from 2005. The Governor in Council disagreed with the Agency's finding that the proposed tariffs were prejudicial to the public interest. In its ruling issued on October 14, 2005 (with reasons provided November 30, 2005), the Agency had rejected fee increases to be applied in the authority's District 1 (from Montréal to Québec City) that were related to an arbitration award to the pilot corporation in that district.

### *Canada Marine Act*

Under the *Canada Marine Act*, the Agency may investigate complaints about fees set by the port authorities, which manage operations at major ports across the country. As well, under this Act, the Agency may investigate complaints regarding tolls set by the St. Lawrence Seaway Management Corporation and the Federal Bridge Corporation.



On June 30, 2006, the Agency ruled that different passenger fees fixed by the Nanaimo Port Authority for float plane operators, fast ferry operators and BC Ferries were unjustly discriminatory. Complaints had been filed by passengers using float plane services and by float plane operators from October 11, 2005 to January 3, 2006. On October 24, 2006, the Federal Court of Appeal granted the Nanaimo Port Authority leave to appeal the Agency ruling. At year end, the outcome of the appeal was not known.

There were no complaints filed regarding tolls by the St. Lawrence Seaway Management Corporation or the Federal Bridge Corporation in 2006.

### *Shipping Conferences Exemption Act, 1987*

Under the *Shipping Conferences Exemption Act, 1987* (SCEA), shipping conferences, or cartels of shipping lines, are exempted from the provisions of the Competition Act. Conferences are allowed to set common tariffs and conditions of carriage if they comply with the provisions of the SCEA and file specific documents with the Agency such as conference agreements, service contracts, notices of tariff increases and surcharges. 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 such complaints were filed in 2006.

## Communicating with Canadians

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

The Agency also has regular contact with the Shipping Federation of Canada, the Canadian Shipowners Association, Chamber of Maritime Commerce, 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 dismissed in 2006*

#### **Global Marine Systems Ltd. v. Atlantic Towing Ltd.**

Court File No.: 06-A-34

Motion for an extension of time to serve and file a motion for leave to appeal Agency Decision No. 244-W-2006 dated April 26, 2006 which denied the Applicant's request for a license to operate the vessel "Cable Innovator" in Canadian waters pursuant to the *Coasting Trade Act*, S.C. 1992, c. 31. On July 13, 2006, the Federal Court of Appeal dismissed the applicant's motion. On July 21, 2006, the applicant filed a Motion to Reconsider the decision rendered by the Federal Court of Appeal on July 13, 2006. The applicant's motion for reconsideration was dismissed with costs on August 28, 2006.

### *Federal Court of Appeal: Cases pending in 2006*

#### **Nanaimo Port Authority v. Canadian Transportation Agency et al.**

Court File No.: A-465-06

Appeal of Agency Decision No. 370-W-2006 dated June 30, 2006 by which the Agency ordered that the Nanaimo Port Authority replace its current passenger fee tariff and that, in developing a new tariff, the Appellant not consider that certain payments made under lease agreements be equated with fees under s. 49 of the *Canada Marine Act*, S.C. 1998, c. 10. On October 11, 2006, the Federal Court of Appeal granted leave to appeal. The appeal process is on-going.

#### **The Canadian Shipowners Association v. Great Lakes Pilotage Authority and Canadian Transportation Agency**

Court File No.: 06-A-51

Application for leave to appeal Agency Decision No. 555-W-2006 dated October 13, 2006 in the matter of the proposed tariff of pilotage charges published by the Great Lakes Pilotage Authority on May 20, 2006 and the notice of objection filed by the Canadian Shipowners Association. The application for leave to appeal has not yet been decided upon by the Federal Court of Appeal.

# Assessment of the Act

The Canadian Transportation Agency is mandated to submit an annual assessment of the *Canada Transportation Act* by virtue of subsection 42(2) of the Act.

Since the inception of the legislation in 1996, the Agency has encountered a number of challenges concerning the operation of the Act. These challenges are summarized in this section. The Agency has reported on some of these issues in its prior annual reports. For a more detailed description of these challenges, refer to the Agency's 2005 Annual Report.

## RAIL TRANSPORTATION

Issue	Current legislation	Operational challenges	Suggested corrective action(s)
Final Offer Arbitration (FOA)	Section 161	Rates and conditions subject to FOA may not represent all rail-related shipper costs and conditions; shippers concerned about costs added after FOA decisions that raise expenses for movement of goods	Address issues related to range of rates and conditions subject to FOA and other related costs
Certificates of fitness	Sections 91 to 94	No provision for Agency to review transfer of a line from a main-line to a short-line carrier	Ensure new short-line carriers operate under proper jurisdiction, shipper and consumer rights protected, adequate liability insurance held, and railway safety and accident investigation regimes applied

Rail line construction	Section 98	Agency cannot consider availability of viable alternatives to new construction such as interswitching or running rights	Provide the Agency with the authority to consider actual need for new rail lines and weigh available alternatives
Transfer and discontinuance	Sections 140 to 146.1	Various issues related to the absence of requirements for advance notice and Agency involvement in rail line transfer and discontinuance cases	Requirement for greater advance notice to Minister, Agency and affected governments; changes to net salvage value provisions to allow Agency to take more factors into account such as the removal of infrastructure in order to reduce traffic on a line
Damage from construction or operation of railway lines	Subsection 95(2)	Stipulation on minimal damage by railway companies, but no mechanism for noise, vibration or pollution complaint investigation by any regulatory body	Give the Agency the responsibility to establish guidelines on complaints and authority to order railways to amend operations to address issues

**AIR TRANSPORTATION**

Issue	Current legislation	Operational challenges	Suggested corrective action(s)
Domestic pricing	Section 66	Wording has led to difficulty in obtaining relevant information needed to make determinations regarding allegations of unreasonable pricing on non-competitive routes and has unduly restricted the Agency's ability to consider certain factors in reaching its conclusions on pricing investigations	Provide the Agency with the authority to consider whatever information it deems relevant to make a complete assessment of a complaint and to compel a carrier to produce any information it considers relevant; these issues are addressed by proposed amendments to the Act that were under consideration by Parliament at year end
Tariff information disclosure	Section 67	Air carriers must make copies of tariffs available for public inspection only at their business offices	Proposed amendments to the Act under consideration by Parliament at year end include a requirement for air carrier licensees to publish their terms and conditions of carriage on their Internet site

# Appendix A: Statutes and Regulations

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

The Agency has primary responsibility for the following legislation:

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

The Agency shares responsibility for the following legislation:

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

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

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

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

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

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

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

*Official Languages Act* R.S.C. 1985, c. 31 (4th Supp.)

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

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

*Public Service Employment Act* R.S.C. 1985, c. P-33

*Public Service Staff Relations Act* R.S.C. 1985, c. P-35

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

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

*Shipping Conferences Exemption Act, 1987* R.S.C. 1985, c. 17 (3rd Supp.)

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

*Air Transportation Regulations* (SOR/88-58)

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

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

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

*Railway Costing Regulations (SOR/80-310)*

*Railway Interswitching Regulations (SOR/88-41)*

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

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

*Railway Traffic Liability Regulations (SOR/91-488)*

*Uniform Classification of Accounts and Related Railway Records*

The Agency shares responsibility for the following regulations:

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

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

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

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

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

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

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

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

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

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



# Appendix B:

## Accessibility Advisory Committee

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

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

### Representatives from the community of persons with disabilities

Alliance for Equality of Blind Canadians

Aquarelle Travel Agency

Canadian Association for Community Living

Canadian Association of the Deaf

Canadian Association of Independent Living Centres

Canadian Council of the Blind

Canadian Hard of Hearing Association

Canadian Hearing Society

Canadian National Institute for the Blind

Canadian National Society of the Deaf-Blind

Canadian Paraplegic Association

Canadian Pensioners Concerned Incorporated

Confédération des organismes provinciaux de personnes handicapées au Québec (COPHAN)

Council of Canadians with Disabilities

Centre québécois de la déficience auditive

Guide Dog Users of Canada

Institut Nazareth et Louis-Braille

Kéroul

Seniors' Voice

## Representatives from the transportation industry

Air Canada

Air Canada Jazz

Air Transport Association of Canada

Association québécoise des transporteurs aériens inc.

Canadian Airports Council

Charlottetown Airport Authority

Greater Toronto Airports Authority

Marine Atlantic

Railway Association of Canada

VIA Rail Canada Inc.

WestJet

Winnipeg Airports Authority

## Other interested parties

Canadian Human Rights Commission

Canadian Air Transport Security Authority

Canadian Standards Association

Government of Alberta

Human Resources and Social Development Canada, Office for Disability Issues

## Transport Canada

Cabin Safety Standards

Transportation Development Centre

Accessible Programs

Domestic Regulations

# Appendix C:

## Canada's Federal Railway Companies as of December 31, 2006

Algoma Central Railway Inc.

Arnaud Railway Company

BNSF Railway Company

Canadian National Railway Company

Canadian Pacific Railway Company

Chemin de fer de la Matapédia et du Golfe Inc.

Corporation of the City of Ottawa carrying on business as Capital Railway

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

Eastern Maine Railway Company

Essex Terminal Railway Company

Ferroequus Railway Company Limited (suspended)

Goderich-Exeter Railway Company Limited

Hudson Bay Railway Company

International Bridge and Terminal Company, The

Kelowna Pacific Railway Ltd.

Kettle Falls International Railway Company

Maine Central Railroad Company and Springfield Terminal Railway Company

Minnesota, Dakota & Western Railway Company

Montreal, Maine & Atlantic Railway Ltd. and the Montreal, Maine & Atlantic Canada Co.

National Railroad Passenger Corporation (Amtrak)

Nipissing Central Railway Company

Norfolk Southern Railway Company

Okanagan Valley Railway Company

Ottawa Central Railway Inc.

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

Québec North Shore & Labrador Railway Company

RaiLink Canada Ltd.

St. Lawrence & Atlantic Railroad (Québec) Inc.

Sault Ste. Marie Bridge Company

Sydney Coal Railway Inc.

Toronto Terminals Railway Company Limited, The

Tshiuetin Rail Transportation Inc.

Union Pacific Railroad Company

VIA Rail Canada Inc.

Wabush Lake Railway Company, Limited