



Canadian  
Transportation  
Agency

Office des  
transports du  
Canada



Making Transportation Efficient and Accessible for All

SPRING 2008

# MOVING AHEAD

CANADIAN TRANSPORTATION AGENCY

## Chair's Message

It has been a year since I assumed the role of Chair and CEO of the Canadian Transportation Agency and I have been impressed with the high level of expertise and dedication of Agency employees.

As the Agency exists by virtue of the *Canada Transportation Act*, our organization is guided in its work by the National Transportation Policy outlined in Part 5 of the Act, that essentially defines the spirit of the law. Revisions to this policy in 2007 place greater emphasis on social outcomes and collaboration between industry and



*Geoffrey C. Hare*

government as we all work towards a more integrated transportation system.

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AVAILABLE IN MULTIPLE FORMATS

Canada

During 2007, the Agency continued to be very active in the area of accessibility. We released the Terminal Code at TRANSED 2007 of which we were also a major sponsor. The Agency issued a major Decision on the one-person-one-fare policy as well as calling out of bus stops. We held public hearings on medical oxygen during the Fall 2007 and work is still ongoing on that issue as well as allergies.

We are also responding to the direction we received from the Supreme Court of Canada in its ruling on *Council of Canadians with Disabilities v. VIA Rail Canada Inc.* It instructed us to apply the principles of the *Canadian Human Rights Act*, including the principle of reasonable accommodation, in addressing obstacles. The Supreme Court clearly indicated that accessible transportation provisions should be considered as “a fundamental human right.” We are doing just that.

Our priority is to ensure that we are able to effectively fulfill our mandate of removing undue obstacles to persons with disabilities who travel by air, rail and ferry in the national transportation network. This means that we need to have the right people in the right place doing the right work at the right time.

To make this happen, the Agency is undergoing a process of organizational renewal. As of April 1, 2008, the Agency’s new primary operational business lines will be Dispute Resolution, and Industry Regulation and Determinations. These two Branches have been created to reflect our primary dispute resolution and regulatory functions.

By adopting a hybrid structure which integrates the current modal approach (air rail, marine) within a functional business delivery model, the Agency will achieve greater flexibility to manage workload and gain increased efficiencies.

Overall, this new structure, coupled with more effective processes, will help ensure that we can continue to fulfill our role in dealing with disputes involving obstacles to the mobility of persons with disabilities. Under the new Dispute Resolution Branch, the Accessible Transportation Directorate will continue to handle all accessibility issues but with greater flexibility to manage workload.

Through facilitation and mediation, we will continue to enhance our work to develop solutions and produce collaborative outcomes resulting in better understanding and agreements between parties that inspire high levels of satisfaction and commitment.

We at the Agency are proud of our long-standing reputation for being fair, transparent and responsive to all of our clients and stakeholders. These changes are meant to build upon this tradition of excellence by tackling workload issues and enhancing our ability to respond to our clients and stakeholders in an effective and timely manner.

As Canada's population ages and the incidence of disability increases, the demand for accessible transportation will be even greater. The Canadian Transportation Agency, in setting its course

as an organization for 2008–2009 and beyond, has positioned itself to play a leading role in the achievement of a national transportation system that is transparent, efficient and accessible for the benefit of the entire country and all of its citizens, including persons with disabilities. ■



Geoffrey C. Hare  
Chairman and CEO

## One-Person-One-Fare

After extensive written pleadings, evidence, and two hearings, the Agency issued a Decision expected to impact some 80,000 persons with disabilities.

In January 2008, the Agency ordered Air Canada, Air Canada Jazz and WestJet to adopt a one-person-one-fare policy for persons with severe disabilities on flights within Canada. The airlines have one year to implement the policy, which does not apply to domestic segments of transborder and international trips.

The Decision means that, for domestic services, these carriers may not charge more than one fare for persons with disabilities who:

- are accompanied by an attendant for their personal care or safety in flight, as required by the carriers' domestic tariffs; or
- require additional seating for themselves, including those determined to be functionally disabled by obesity.

As well, the Agency concluded that the Gander International Airport Authority, also a respondent in the case, failed to produce evidence to demonstrate that such a policy will impose undue hardship on it. Accordingly, the Airport was ordered not to charge its improvement fee for attendants of persons with disabilities.

The Decision does not apply to:

- persons with disabilities or others who prefer to travel with a companion for personal reasons;
- persons with disabilities who require a personal care attendant at destination, but not in-flight; and
- persons who are obese but not disabled as a result of their obesity.

This one-person-one-fare policy is based on longstanding principles of equal access to transportation services for persons with disabilities, regardless of the nature of the disability, and the Agency's legislative mandate to remove "undue obstacles" to their mobility. It also respects related decisions of the Supreme Court of Canada and Federal Court of Appeal.

In a separate statement supplementing the Decision, the Agency offered to facilitate a collaborative process to develop a common screening process for implementation of the one-person-one-fare policy. Such a co-operative approach to work out common terms of compliance would potentially benefit Air Canada, Air Canada Jazz, WestJet and the Gander International Airport Authority, as well as other Canadian air carriers and airport authorities that may consider voluntary implementation of the policy.

While the airlines were expected to implement the one-person-one-fare policy,

*The Supreme Court confirmed last year, in Council of Canadians with Disabilities v. VIA Rail Canada Inc., that the Agency must apply human rights legislation in identifying undue obstacles to the mobility of persons with disabilities.*

*The Supreme Court also ruled in 2006, in Tranchemontagne v. Ontario (Director, Disability Support Program), that there should be no discrimination between persons with disabilities in terms of benefits regardless of the underlying reason for their disability.*

*The January 13, 2006, Federal Court of Appeal decision in Linda McKay-Panos v. Air Canada confirmed that a person who is obese may be disabled for purposes of air travel if unable to fit in an airline seat.*

and develop screening criteria for assessment on a case-by-case basis, the airlines requested leave to appeal this Decision to the Federal Court of Appeal in February 2008. At the time of printing this article, the airlines and the Agency were awaiting the Court's decision.

For more information on the Agency's Decision No. 6-AT-A-2008, please visit our Web site at [www.cta.gc.ca](http://www.cta.gc.ca). As well, two related news releases and two back-grounders may be found in the Web site's Media Room. ■

# Terminal Code Taking Effect

Work is well underway to make national airports, railway stations and ferry terminals more accessible for persons with disabilities. They are obliged to implement all parts of the Terminal Code by June 2009.

This Code sets minimum accessibility standards all the way through from the parking lot to the boarding area. It describes the principles that terminal operators need to follow to ensure that persons with disabilities can check in, drop off baggage, complete their trip, reclaim their bags and belongings at the other end, and reach their destination without encountering undue obstacles to mobility.

Above all, the Code provides terminal operators with practical advice on achieving the principles of accessibility. In keeping with previous Codes, it follows Canadian Standards Association guidelines but avoids rigid descriptions of exact procedures and measurements because of the great diversity of Canada's transportation network – from global aviation hubs to small railway stations and ferry terminals with at least 10,000 passengers embarking and disembarking.

To develop the Code, the Agency reviewed complaints about terminal accessibility and drew upon its past experience in dealing with such complaints. It also examined research that showed that persons with disabilities face issues at check-in counters, help desks, baggage retrieval areas and ground transportation. The Agency worked closely with the community of persons with disabilities and the transportation industry to define the Code's provisions, a key factor in ensuring its successful implementation.

Some parts of the Code took effect as soon as it was announced in June 2007 at the 11th International Conference on Mobility and Transport for Elderly and Disabled Persons (TRANSED). Right from the first day, new contracts for construction and ground transportation have had to take the Code into account. Over the next year, the rest of Canada's transportation terminals will be moving towards full compliance.

For more information, visit the Agency's Web site. ■



# Clear Guidance From Supreme Court

The Supreme Court of Canada provided the Canadian Transportation Agency with important insight into its mandate when it issued its March 23, 2007 ruling in respect of the Agency's Decision concerning VIA Rail's Renaissance cars. In upholding the Agency's order to improve the cars' accessibility, it said that the same analysis is required to assess whether there is undue hardship under the *Canada Transportation Act* as is required under the *Canadian Human Rights Act*.

Writing for the 5-4 majority, Justice Rosalie Abella observed that "independent access to the same comfort, dignity, safety and security as those without physical limitations is a fundamental human right for people who use wheelchairs."

The Court confirmed the Agency's Decision No. 620-AT-R-2003, which stated that the railway cars posed undue obstacles to the mobility of persons with disabilities. The Decision ordered VIA Rail to widen the doorways in sleeper units and provide wheelchair tie-downs. It also required VIA Rail to equip its economy cars with an accessible washroom near the wheelchair tie-down. VIA Rail must provide enough floor space for a personal wheelchair and a service animal, and room for the wheelchair to get in and out.

VIA Rail has since provided design mock-ups of the railway cars for review by the Agency and by the Council of Canadians with Disabilities, who filed the complaint.

In addition to these specific measures, the Supreme Court clarified the Agency's decision-making procedure. This is a three-step process. When the Agency receives a complaint about an aspect of the federal transportation network, it must first establish that the complaint involves a person with a disability. Then it must determine whether the complaint involves an obstacle to the mobility of persons with disabilities. Finally, the Agency must determine whether the obstacle is undue.

The Supreme Court looked closely at this third step in the decision-making process. It clarified that the transportation service provider bears the burden of proving why the obstacle should not be removed. To do this, the service provider must show that removing the obstacle would pose an undue hardship to the company.

As Justice Abella observed, "This means an approach that, to the extent structurally, economically and otherwise reasonably possible, seeks to minimize or eliminate the disadvantages created by disabilities. It is a concept known as reasonable accommodation."

The case marked the first time the Supreme Court had considered Part V of the *Canada Transportation Act*, which mandates the Agency to remove undue obstacles to mobility from the federal transportation network. The judgement has broad implications for the Agency's

consideration of accessibility-related applications and in processing new accessibility complaints.

For more information on the Agency's Decision No. 620-AT-R-2003, please visit [www.cta.gc.ca](http://www.cta.gc.ca). ■

## Ottawa Buses Improve Access

OC Transpo bus drivers are now required to call out major or requested stops, a measure ordered by the Canadian Transportation Agency in its final Decision on November 30, 2007, that removes an obstacle to mobility.

The Agency is now satisfied that OC Transpo has already implemented corrective measures to ensure that drivers

call out major and requested stops, and that passengers can hear them clearly.

The Agency's jurisdiction includes the OC Transpo buses because they provide interprovincial bus service by serving both Ottawa and the Gatineau area.

See the Agency's Web site for more information. ■

## Flying the Complicated Skies

There is no question that travel by air has become more complicated in recent years. The Canadian Transportation Agency is trying to make it easier by providing tips for travellers:

- After reserving a flight, and before paying for a ticket, call the airline directly to obtain written confirmation that all travel needs will be met.
- A few days before departure, verify accessible seating and other arrangements.
- Review baggage weight restrictions. They can change. Even so, mobility aids must always travel free of charge.
- Call ahead for information about how, when and where to check in for a flight.

- Ask also about terminal amenities and services available, like the location of accessible parking.
- Pack labelled prescriptions in carry-on luggage, but almost everything else should go in checked bags.
- Smaller technical and mobility aids can be carried in the cabin, and should not be checked if they are needed during the trip.
- Larger aids are usually carried as checked baggage. Certain aids such as electric wheelchairs may not always be carried on smaller aircraft, for example airplanes with less than 60 seats.
- Ask the crew for assistance, if needed, in getting to the airplane from the check-in counter and when boarding the airplane.
- In flight, ask the crew for help to and from the washroom if needed. But they are not allowed to help a passenger inside the washroom.
- Upon landing, the airline staff must help passengers, where needed, reach their connecting flight.
- Request help if needed to retrieve checked luggage at destination.

Learn more through the Agency's call centre, and its publications ([www.cta.gc.ca](http://www.cta.gc.ca)). These publications are also available in multiple format upon request:

- **Fly Smart:** a helpful brochure with valuable information about flying in Canada and abroad.
- **Reservation Checklist:** a step-by-step guide for travel agents to follow when booking a trip for a passenger with a disability. Also a good checklist for information to provide when speaking to the airline.
- **Taking Charge of the Air Travel Experience:** a brochure that describes accessible features and services available to persons with disabilities travelling by air.

Other helpful Government of Canada Web sites:

- Accessible transportation services, including travel advice for persons with disabilities: **[www.accesstotravel.gc.ca](http://www.accesstotravel.gc.ca)**
- Security screening: **[www.catsa.gc.ca](http://www.catsa.gc.ca)**  
From the homepage, click on 'Travel Preparation' or 'Special Needs.'
- Crossing the border: **[www.cbsa.gc.ca](http://www.cbsa.gc.ca)**  
From the homepage, click on 'Travel Documents for Crossing the Border' or click on 'Publications and Forms' – 'Guides and Brochures' – 'I Declare.' ■



## WestJet: Can Do!

WestJet offers an example of best practices in removing obstacles to the mobility of passengers with disabilities. It maintains an extensive training program for its staff, and ensures that new employees receive training in disability issues before they serve the travelling public.

Typically employees attend a workshop within three days of being hired. Audio-visual presentations, group discussions, cases and role-playing exercises prepare them to serve passengers with disabilities. WestJet provides refresher training annually.

Measures like these are described in the Canadian Transportation Agency's Code of Practice for Removing

Communication Barriers. The Code took full effect last June. It targets the systemic communication problems faced by travellers with disabilities.

WestJet notes that it was the first airline to provide all passengers with the same level of information, and to use multiple formats to make the information accessible to passengers with disabilities.

The airline's Web site is also communicating better. Passengers who use screen readers are able to make reservations online and to use new, simpler forms to communicate their disability-related needs more clearly. ■

## Marine Atlantic in Global Training Program

Passengers on Marine Atlantic ferries are travelling in the company of international movie stars – the ships themselves. Parts of the fleet appear in a British training video about assisting persons with disabilities on ferries and cruise ships. Most of the video was shot on board the Marine Atlantic ferries.

The video, produced by Videotel, is packaged with a workbook and interactive computer-based training. It urges

crewmembers to ask passengers how best they can help.

The DVD-based program, titled "How Can I Help You? Passengers with Disabilities", features a man with a hearing disability, a woman who uses a wheelchair, and a woman who travels with a companion dog. The program points out that many ships have been adapted for persons with disabilities, but establishes that the crew's attitude is even more important. ■

# Updates

## MEDICAL OXYGEN

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The Agency will be releasing its decision this year involving complaints against Air Canada and WestJet over their policies on medical oxygen. The decision will address 25 complaints against Air Canada and one against WestJet.

At the time of the complaints, Air Canada did not allow passengers to bring their own oxygen on board. However, as of February 2008, it allows passengers to bring their own portable oxygen concentrator on certain, but not all, flights. Air Canada still continues to offer its own medical oxygen service, but only under certain conditions. It requires 48 hours notice, charges a fee, and requires the passenger's doctor to confirm that the oxygen is needed on board, a process which could incur additional costs.

WestJet does not provide any medical oxygen and, prior to September 2006, restricted the use of passenger's own oxygen to domestic flights. Since that date, however, WestJet has allowed passengers to bring their own oxygen concentrators on all flights.

The Agency ruled in 2005 that the airlines' policies on medical oxygen posed obstacles to the mobility of persons with disabilities. It held hearings in Fall 2007 to determine whether there were undue obstacles to the mobility of passengers with disabilities, or whether the two carriers had done all they reasonably could to accommodate the needs of these passengers.

At the time of printing this article, the Agency's decision on the 26 medical oxygen-related complaints had not yet been released.

## ALLERGIES

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The Agency has, for close to eight years, been addressing the issue of whether people with allergies can be considered as persons with disabilities under Part V of the *Canada Transportation Act*. The question is a jurisdictional one which was brought forward in light of several allergy-related cases filed against Air Canada between August 2000 and July 2001.

For example, one case was brought to the Agency by a man with an eye disorder linked to cats, who objected to the presence of cats in the passenger cabin on an Air Canada flight. During its investigation, the Agency received a jurisdictional challenge from Air Canada as to whether an allergy can be considered a disability for the purposes of Part V of the Act. The question had to be addressed before the case could go forward.

As a result, in 2002, the Agency issued a Decision stating that an allergy per se is not a disability for the purposes of Part V of the Act. However, the Agency noted that there may be people with allergies who can be considered to have a disability under the Act. Therefore, the Agency stated that it would proceed on a case-by-case basis.

The case of the man with the cats was then examined independently to determine whether in that situation the allergy could be considered a disability under the Act. The case was dismissed because of the lack of fact-based evidence to support his disability, however the Agency's Decision continues to impact cases currently under investigation.

There are three allergy-related complaints under investigation at the moment, all filed against Air Canada. Two pertain to nuts and peanuts, and the other pertains to flowers. Pending this ruling, three other cases involving chemicals, nuts, and peanuts, have been put on hold. As per the Decision, each is being examined on a case-by-case basis.

In addition, the Agency is gathering expert evidence on pet allergies and multiple chemical sensitivities, a condition closely related to allergies, in order to inform the Agency's investigation of complaints regarding these matters.

If the allergy is determined to be a disability in any of these cases, the Agency will then decide whether Air Canada's policies on allergens pose an undue obstacle to mobility, and follow-up accordingly.

The allergy-related cases which have been brought forward over the last eight years and which continue today reveal the increasing complexity the Agency faces in determining what constitutes a disability under the Act.

For more information on the Agency's Decision No. 243-AT-A-2002, and to stay up to date on these cases, subscribe to [www.cta.gc.ca](http://www.cta.gc.ca). ■

# Involved in a Dispute About Transportation?

## The Canadian Transportation Agency can help

If you have a concern related to transportation, bring it first to the service operator's attention to resolve the issue. If that doesn't work, you can discuss issues involving accessibility or the terms and conditions of carriage with an Agency representative. Staff can facilitate an informal, no-cost discussion with the operator. Often they have found solutions acceptable to both parties.

Mediation is also available which is more structured than facilitation, and

more creative and flexible than adjudication. If both parties agree, an Agency-appointed mediator will work with them to find a mutually acceptable solution.

Formal adjudication, always an option, puts the issue before a tribunal of at least two Agency members. Working much like a court, they hear the case and make a decision. They can order enforceable corrective measures.

## CONTACTING THE AGENCY

The Accessible Transportation Directorate, now located in the Dispute Resolution Branch, is available as always to respond to queries. The Agency's Web site includes a questions and comments form, and subscribers receive announcements by e-mail on updates to the site, decisions and orders. Publications are available online and in multiple formats upon request. The toll-free call centre is open 8 a.m. to 8 p.m. EST, Monday to Friday. The operator will try to address the question right away, but if further information is needed a call back will occur as soon as possible.



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