



Canadian
Transportation
Agency

Office
des transports
du Canada

Annual Report 2008-09

Canadian Transportation Agency



Canada

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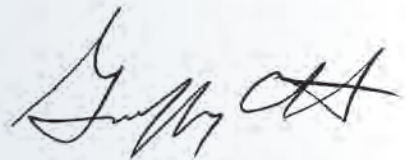
May 2009

The Honourable John Baird, 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 to present to you the Annual Report of the Canadian Transportation Agency for the period 2008-09, including the Agency's assessment of the operation of the Act and any difficulties observed in its administration.

Yours sincerely,

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

Geoffrey C. Hare
Chair and Chief Executive Officer



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Message from the Chair and Chief Executive Officer



The 2008-09 Annual Report of the Canadian Transportation Agency outlines our contribution towards the achievement of a competitive, efficient and accessible transportation system. The Agency carries out its mandate through fair, transparent and timely dispute resolution, essential economic regulation and effective communication with Canadians.

Achieving high performance standards

Among the Agency's accomplishments in 2008-09 are a series of initiatives that form the building blocks for a more efficient, responsive and forward-looking organization. For example, during the last year we implemented a new organizational structure, initiated reviews of key business processes, established performance measures and targets, developed a strategy for human resources renewal, and rolled out our first-ever three-year Strategic Plan, which will serve as our guide until 2011-12.

And this is only the beginning. The Agency's processes will continue to be improved in the pursuit of client service excellence, the best possible use of the Agency's human and financial resources, and the Government of Canada's objective of making federal institutions more effective and accountable. We will also be reviewing and updating existing regulations, codes of practice and guidelines to ensure they are up to date, relevant and clear.

Getting results

I encourage you to review the contents of this Annual Report, which details the many results achieved over the past year in all of the Agency's diverse areas of responsibility. Let me highlight a few of our major accomplishments.

During these past 12 months, the Agency eliminated a significant backlog of dispute cases carried over from previous years. Greater emphasis has also been placed on alternative dispute resolution mechanisms, including facilitation and mediation. As a result of amendments to the *Canada Transportation Act*, parties to disputes now have a broader range of choices in how they wish to resolve issues.

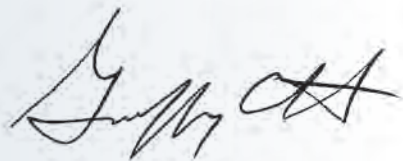
Among its many decisions, the Agency determined that both the Canadian National Railway and the Canadian Pacific Railway had exceeded their revenue caps for the movement of Western grain in 2007-08, following a one-time adjustment to their revenue caps to reflect lower hopper car maintenance costs.

Improved access for persons with disabilities to the national transportation network was also a major Agency achievement in 2008-09. Most notably, Air Canada and WestJet implemented new policies and procedures to comply with the Agency's one-person-one-fare decision for persons with disabilities who require more than one seat on an aircraft. Significant progress was also made towards ensuring VIA Rail's compliance with an Agency ruling on the accessibility of its Renaissance passenger cars.

Connecting with Canadians

The Agency is committed to improving its corporate communications and providing relevant and easily understood information on a timely basis. It will also assist industry efforts in support of this objective, such as the development by air carriers of easier-to-understand tariffs for passengers. Additionally, the Agency has initiated efforts to obtain and act on feedback from clients and stakeholders about the Agency's services and activities. All of those involved in the national transportation system, be they regulators like the Agency, service providers, users or others, can greatly benefit from the sharing of information, points of view and ideas.

I would like to express my sincere thanks to our Members and to the more than 250 Agency staff, without whose talent and hard work the impressive results and progress highlighted in this Annual Report would have been impossible. This is also an opportunity for me to welcome our newest Member, Jean-Denis Pelletier, who joined the Agency in November 2008.

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

Geoffrey C. Hare

Chair and Chief Executive Officer

Key Accomplishments

In its 2008-11 Strategic Plan, the Agency identified five priorities for action. What follows is a brief summary of key accomplishments regarding each of these five priorities in 2008-09.

Effective dispute resolution and industry regulation

- Successfully eliminated a significant backlog of dispute cases;
- Announced that the Canadian National Railway Company (CN) and the Canadian Pacific Railway Company (CPR) had both exceeded their revenue caps for the movement of Western grain in 2007-08;
- Created a permanently-staffed alternative dispute resolution service;

In 2008-09, the Agency successfully mediated 22 cases. Of these:

- 15 related to rail disputes;
- 6 related to accessibility disputes;
- 1 related to an air dispute.

- Released *Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration*, following extensive consultations;
- Contributed as a member to the Canadian government team that successfully negotiated a new bilateral air transportation agreement encompassing all 27 European Union member states.

In 2008-2009, the Agency issued 2,649 rulings, virtually all of which required the involvement of Members of the Agency.

These rulings included:

- 609 Orders;
- 612 Decisions;
- 1,215 Permits;
- 35 Final Letter Decisions; and
- 178 Interim Decisions.

The Agency also closed 183 cases formally, through adjudicative decisions, and 2,455 through administrative rulings or determinations.

A more accessible transportation network

- Monitored the implementation by Air Canada, Jazz Air and WestJet of a one-person-one-fare policy for the domestic travel of persons with severe disabilities, as per its 2007-08 Decision;
- Developed a new compliance monitoring framework designed to assess the extent to which transportation service providers are abiding by existing accessibility Codes of Practice;
- Issued a final Decision on 26 complaints regarding obstacles to the mobility of persons requiring medical oxygen to travel by air.

Enhanced internal and external relations

- Launched a fully redesigned Agency Web site;
- Published *Take Charge of your Travel*, a new guide designed to help persons with disabilities when they travel;
- Developed a client satisfaction survey framework to be implemented beginning in 2009-10.

A tribunal respected for its fairness and balance

The Agency prides itself on its status as a leading Canadian tribunal. In making rulings, the Agency's Members carefully consider all of the facts before them and uphold the highest standards of impartiality.

One of the Agency's key performance targets concerns the fairness of its procedures.

Performance Target to be achieved by 2008



Target Achieved

0% of discretionary rulings overturned by the Federal Court of Appeal or the Supreme Court of Canada on the basis of procedural fairness

Status as of March 31, 2009: 0%

The Agency's people as its greatest asset

- Completed a gap analysis and identification of key positions and Agency vulnerabilities as part of succession planning;
- Expanded the Agency's investment in employee learning and training;
- Created and maintained pools of qualified candidates through anticipatory staffing.

Organizational support and responsiveness

- Implemented a Performance Measurement Framework, began reporting on these indicators in this Annual Report, and made significant progress in meeting the targeted performance levels;
- Implemented a new Governance Framework for the Agency, designed to ensure that strategic, operational and performance goals are met.

In addition to these key achievements, the Agency continued to administer its day-to-day operations.



About the Agency

For more on the Agency, its role and its vision, go to www.cta.gc.ca/eng/aboutus.

Our **Mandate**

To administer the economic regulatory provisions of Acts of Parliament affecting all modes of transport under federal jurisdiction.

Our **Mission**

To assist in achieving a competitive, efficient and accessible transportation system through dispute resolution, essential economic regulation and communication in a fair, transparent and timely manner.

Our **Vision**

To be a respected, leading tribunal contributing to a competitive and accessible national transportation system efficiently meeting the needs of users and service providers and the Canadian economy.

The Canadian Transportation Agency is an independent administrative tribunal of the Government of Canada. It is responsible for:

- Dispute Resolution, to resolve complaints about transportation services, rates, fees and charges;
- Accessibility, to ensure that the national transportation system is accessible, particularly to persons with disabilities; and
- Economic Regulation, to provide approvals, licences, and make decisions on matters involving federally-regulated air, rail and marine transportation.

In exercising its court-like powers, the Agency employs processes that are responsive, fair, and transparent, and considers the interests of all parties to disputes involving the national transportation system. Its adjudicative formal decision-making process is governed by the rules of natural justice and fairness.

Through its actions, and by working closely with Transport Canada, other departments, its clients and stakeholder groups, the Agency supports the goal of a Canadian transportation system that is competitive, efficient and accessible – and that meets the needs of those who provide or use transportation services.



People as the Agency's greatest asset

Members

The Members of the Agency are responsible for issuing quasi-judicial decisions and orders related to complaints or applications, as well as addressing other issues within the national transportation system. Five full-time Members are appointed by the Governor in Council, including the Chair (who is also the Chief Executive Officer) and the Vice-Chair.

In 2008-09, Agency Members made decisions resulting in over 2,600 rulings.

Employees

The Agency fulfills its legislative mandate through the work of more than 250 employees.

They are a diverse group of transportation experts, lawyers, program or environmental analysts, engineers, economists, mediators and support staff who bring a wealth of experience and a broad range of skills to the work of the Agency.

The relatively small size of the Agency provides a work environment that fosters close links among employees and creates a strong sense of belonging.



From left to right:

- **Raymon Kaduck**
Member
- **Mark MacKeigan**
Member
- **Geoff Hare**
Chair and
Chief Executive Officer
- **Jean-Denis Pelletier**
Member
- **John Scott**
Vice-Chair

Meeting the demographic challenge

Like other federal government departments, the Agency faces a demographic challenge posed by the retirement of a significant portion of its staff.

The Agency fully embraces the principle that employees are the greatest asset of any organization. It also recognizes that to attract and retain highly skilled individuals, they must be provided with a working environment that fosters innovation, develops talent and creates opportunities for employee development.

Performance Target



Target Achieved

Knowledge management strategy implemented during 2008-2011

- ✓ Generic competencies have been updated for all positions
- ✓ Pilot projects on knowledge management conducted in 2008-09 to identify best practices

Our Values

- **Integrity.** We act with honesty, fairness and transparency.
- **People.** We treat people with fairness, courtesy and respect, and foster a cooperative, rewarding working environment.
- **Quality Service.** We provide the highest quality services through expertise, professionalism and responsiveness.
- **Communications.** We promote the constructive and timely exchange of views and information.
- **Innovation.** We commit to creative thinking as the driving force to achieve continuous improvement.
- **Accountability.** We take full responsibility for our obligations and commitments.



Performance Target



Target Achieved

Recruitment strategy implemented during 2008-2011

- ✓ Agency Student Employment Program launched in March 2009
- ✓ Pools of qualified candidates created through selection processes in 2008-09 used to fill vacancies
- ➡ Approach for proactive use of resourcing pools to be developed in 2009

To prepare for the retirement of a significant portion of staff, pools of qualified candidates are being created, and maintained, as part of the Agency's anticipatory staffing strategy.

To continue providing the same consistently high level of service to Canadians, and to guarantee that knowledge and expertise remain within the Agency, initiatives such as succession planning, continuous learning programs and in-house language training have been put into place.

Performance Target



Target Achieved

Succession plan in place by 2008

- ✓ Gap analysis and identification of key positions and Agency vulnerabilities completed in 2008
- ➡ Ensure that recruitment strategy and knowledge management activities address vulnerabilities in 2009-10



The Agency's enforcement team

The Agency's 2008-2011 Strategic Plan

The Agency's Strategic Plan was developed and launched in 2008 and will continue to serve as the Agency's guide until 2011. The end of 2008-09 marks the first full year of the plan's implementation.

One overarching objective guides the implementation of the Strategic Plan – that of upholding the Agency's long-standing reputation as a leading Canadian tribunal.

This will be achieved by focussing on the following five priorities:

- 1 Effective **dispute resolution** and **economic regulation**.
- 2 Focussing on our **people** as our greatest asset.
- 3 Enhanced **internal and external relations** through clear and timely communications.
- 4 A more **accessible transportation** network without undue obstacles to the mobility of persons.
- 5 **Organizational support and responsiveness** through superior business management practices.

The plan serves as a guiding principle for all Agency actions – from operational plans to outreach strategies – and has led to greater clarity through foresight in multi-year planning. Simply put, the entire Agency team shares a vision, understands it clearly, and has its sights set on achieving it.

To read the Agency's Strategic Plan, go to www.cta.gc.ca/eng/stratplan.

How the Agency works

By administering transportation regulations and providing dispute resolution services, the Agency ensures that transportation users, commercial shippers and individual travellers receive the protection provided for them in the legislation, if market forces alone do not result in fair, reasonable service.

In doing so, the Agency constantly sets, and strives to achieve, the highest performance standards.

Performance Target



Target Achieved

Operational plans integrate multi-year budgeting and planning into resource management allocations by 2008-09



Three-year budgeting and strategic planning process introduced incorporating the following into Agency operational plans:

- Performance measures and reporting
- Human resource and information management and technology planning
- Risk management

Superior performance and accountability

Due to the implementation of a new organizational structure, which took effect on April 1, 2008, the Agency is now in a better position to manage workloads, respond to complex cases quickly and adapt to ongoing changes in its operating environment.

The Agency is also committed to meeting the accountability requirements of a federal government organization. A new Governance Framework and significant changes to committee structures have ensured that the Agency is now equipped with a comprehensive and integrated model for management, including ensuring that performance targets are being met.

Performance Target



Target Achieved

New governance and committee structure in place to guide and oversee strategic priorities implementation and operational delivery by 2008-09



New framework implemented in October 2008



Four new committees designed to focus efforts and resources on achieving Strategic Plan and operational objectives in place as of December 2008

For more on how the Agency works, go to www.cta.gc.ca/eng/process.

Measuring performance

The Agency's results-focussed Performance Measurement Framework establishes benchmarks and determines the level of service delivery it needs to achieve. These benchmarks are used to track how closely objectives and specific targets are being met and to support short- and long-term decision-making.

Faster-than-expected progress has been made on a number of performance targets. The Agency is seeing real and tangible benefits from its evaluations of business processes and the identification of opportunities to improve efficiency, while maintaining the high quality and reliability of its services.

Performance Target



Target Achieved

Development of an Integrated Risk Management Framework by 2008-09

- ✓ Risk Management and Legal Risk Management Framework approved by Executive Committee in 2008-09
- ➡ Updating of Corporate Risk Profile underway, to be approved by the Agency in 2009-10

Performance Target



Target Achieved

Full implementation of Performance Measurement Framework and ongoing reporting on performance measures by 2008-09

- ✓ Agency Performance Measurement Framework approved by Treasury Board Secretariat in 2008
- ✓ Framework published in the Agency:
 - 2008-11 Strategic Plan
 - 2009-10 Report on Plans and Priorities
- ✓ Framework being reported on in the Agency:
 - 2008-09 Annual Report
 - 2008-09 Departmental Performance Report



Reaching out to stakeholders and clients

In providing its services, the Agency is committed to clear and timely communications, and enhanced dialogue with clients and stakeholders.

The Agency strives to achieve this by:

- Effectively communicating the Agency's role, objectives, priorities and processes.
- Regularly engaging in dialogues with external clients and stakeholders.
- Improving the Agency's ability to identify and respond to client and stakeholder issues and needs.

As part of its commitment to providing more easily understood information, the Agency's redesigned Web site was launched on February 4, 2009. The Agency consulted with stakeholders and clients during the site's development, resulting in a new site that is better tailored to the needs and requirements of its diverse users.

Helping to anticipate and address accessible transportation challenges

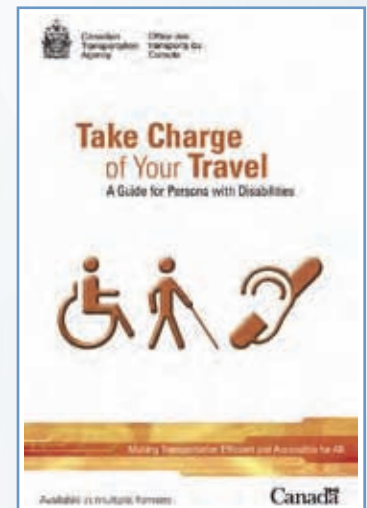
On March 30, 2009, the Agency launched its new publication *Take Charge of Your Travel* at its Accessibility Advisory Committee meeting in Ottawa.

Take Charge accompanies the reader from start to finish of a trip. It can be used by travellers, travel agents and transportation service providers to plan trips and ensure that accessibility needs are met.

Developed in consultation with representatives from associations of persons with disabilities and the transportation industry, this new guide will meet the needs of more travellers, as it covers all federally-regulated modes of transportation. It describes services and features for travellers with disabilities who use airplanes and trains, as well as passenger ferries and buses that cross international or provincial borders.

“[...] Knowledge is the key factor for any travel preparations, and this guide puts a great deal of knowledge in the [traveller's] hands.”

– Sheila Duham, WestJet



Encouraging the exchange of ideas

To facilitate an open dialogue with clients and stakeholders, the Agency has initiated small- and large-scale consultations, as well as roundtable meetings. Examples include:

- The meeting of the Agency's Accessibility Advisory Committee, held in March 2009, which brought together members of the transportation industry with groups representing persons with disabilities;
- The *Guidelines for the Resolution of Complaints Concerning Rail Noise and Vibration*, launched in October 2008, which were the fruit of extensive consultations and resulted in the creation of a technical advisory committee to provide expertise on best practices related to noise and vibration issues; and
- Dialogues with community and industry stakeholders, which will continue throughout 2009-10.

Ongoing consultations

Over the years, the Agency has published a number of codes of practice on making the federal transportation system more accessible to persons with disabilities. The Agency regularly consults with stakeholders on how to best implement the provisions of these codes and provides clarification as necessary, especially following regulatory changes.

- In a Decision issued in October 2008, the Agency addressed a provision of the Agency's *Code of Practice: Aircraft Accessibility for Persons with Disabilities* requiring tactile row markers to be placed "on overhead bins or on passenger aisle seats."

Recognizing practical difficulties in implementing the provision, the Agency is holding consultations with industry and interested parties to explore alternatives that will permit persons with visual impairments to independently find their assigned seats.



- The Agency is also developing an implementation guide to assist air carriers in applying a provision of the Air Code on the accommodation of persons travelling with service animals, and in meeting the requirements of the *Air Transportation Regulations*. These regulations require that service animals be carried free of charge and be permitted to remain on the floor at the passenger's seat.

In a June 2008 Decision, the Agency stated that if the space available is so limited that it causes extreme discomfort to the traveller or animal, it can increase the risk of injury to both and affect their safety and well-being. Consultations are being held to help air carriers determine the floor space requirements for service dogs.

Obtaining feedback from clients

In order to better identify and respond to the needs of Canadians, the Agency has also developed a framework to measure client satisfaction, as well as client-focussed surveys which will begin to be implemented in 2009-10. These tools will provide crucial feedback on the Agency's performance and client issues, and will help continually improve service delivery and responsiveness.

Performance Target



Target Achieved

Measures of satisfaction with Agency services related to serving the needs of users of, service providers within and others affected by the national transportation system



Develop a plan to measure client satisfaction by 2008



Conduct benchmark surveys and set targets by 2009-10



Conduct subsequent survey in 2010-11



Dispute Resolution



For more on the Agency's dispute resolution processes, go to www.cta.gc.ca/eng/disputes.

The Agency's role in resolving disputes

Each year, hundreds of people and organizations turn to the Agency looking for ways to resolve their disputes about transportation matters.

The Agency has a mandate and the expertise to resolve disputes about:

- transportation services;
- fares, rates and charges;
- terms and conditions of carriage; and
- accessibility.

Before filing a complaint with the Agency, a dissatisfied party is expected to first bring the complaint directly to the transportation service provider. If this approach is not effective, the Agency can accept a request to investigate the complaint further.

Agency staff can bring parties in a transportation dispute together informally – through facilitation or mediation – in order to help them understand each other's needs and interests, and to find a solution that works for everyone involved.

The Agency's Dispute Resolution Spectrum

Facilitation

Mediation

Arbitration

Adjudication



Informal process

voluntary
collaborative
less expensive
potentially faster
potential win-win
relationships central

Formal process

mandatory
adversarial
more expensive
potentially slower
potential win-lose
relationships peripheral

The Agency's experience in the realm of alternative dispute resolution has shown that these processes are significantly more efficient – in terms of time, cost and resources – than more formal processes such as arbitration or adjudication.

Alternatively, the Agency can investigate a complaint using formal adjudication. The decision then issued can carry the same weight as a court ruling.

In 2008-09, the Agency resolved 757 disputes.

Of these,

- 655** were resolved through facilitation;
- 22** were resolved through mediation; and
- 80** were resolved through Decisions issued as a result of formal adjudication.

Balancing privacy concerns and the open-court principle

The Agency is bound by the open-court principle, which guarantees the public's right to know how justice is administered and to have access to decisions rendered by administrative tribunals.

Recently, the Agency's privacy statement was refined to more clearly reflect that its decisions, which are publicly available and posted on its Web site, include the names of the parties and witnesses involved. However, in order to address

the privacy concerns of clients, the Agency has taken steps to ensure that its decisions are not directly accessible through Internet search engines.

To read the updated privacy statement, go to www.cta.gc.ca/eng/notices.

Improving the efficiency of dispute resolution

In 2008-09, the Agency successfully eliminated a significant backlog of cases carried over from previous years. Indeed, although complaints are client-driven – which makes Agency workload difficult to predict – considerable efforts are being made to simplify and rationalize the dispute resolution process.

For example, when resolving straightforward disputes, informal processes such as facilitation and mediation can present an attractive alternative to formal adjudication, as they are often significantly less time- and resource-intensive.

This is why in its 2008-2011 Strategic Plan, the Agency committed itself to improving the responsiveness and effectiveness with which disputes are resolved, and to promote such alternative dispute resolution (ADR) mechanisms.

To this end, a permanently staffed ADR unit was created to meet the expected rise in demand for the informal resolution of disputes.

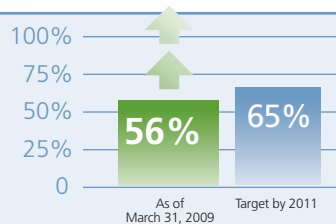
For detailed statistics on dispute resolution, go to www.cta.gc.ca/eng/dr-stats.

However, the increasingly complex nature of issues raised in complaints means that the formal adjudicative process must remain one of the Agency's dispute resolution tools. The nature of such formal cases often requires extensive proceedings and analysis, which can lengthen the time frame required for their resolution.

As a result, meeting the 120-day target for the resolution of certain complex cases through the formal adjudicative process will continue to be a challenge.

Performance Target to be achieved by 2011

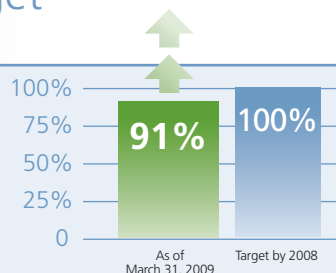
65% of disputes resolved formally within 120 days



In order to set a normalized initial benchmark for the measurement of Agency performance, a number of backlogged cases were not included in this calculation. These cases were primarily related to major accessibility decisions on access to medical oxygen when travelling by air and one-person-one-fare air travel policies.

Performance Target to be achieved by 2008

100% of mediation cases resolved within 30 days



Resolving Accessibility Disputes

The Agency is responsible for ensuring that undue obstacles to the mobility of persons with disabilities are removed from federally-regulated transportation services and facilities.

In 2008-09, the Agency was involved in 108 accessibility cases, including:

- 61** cases carried forward from previous years, largely related to passengers requiring medical oxygen and one-person-one-fare policies; and
- 47** new applications received.

Of these cases,

- 33** were resolved through facilitation;
- 6** were resolved through mediation;
- 36** were resolved through adjudication;
- 8** were withdrawn; and
- 25** were still in progress at year end.

Undue obstacles are removed in two ways:

- on a case-by-case basis by resolving individual complaints through one of the Agency's dispute resolution processes; and
- on a systemic basis by developing regulations, codes of practice and standards concerning the level of accessibility in modes of transport under federal jurisdiction, including air, rail, and extra-provincial ferry and bus transportation.

Determining whether or not an obstacle is undue

When an obstacle to the mobility of a person with a disability is determined, it is up to the respondent transportation service provider to prove that the obstacle is not undue and that reasonable accommodation has been provided without imposing, on a balance of probabilities, undue hardship.

When it determines an obstacle is undue, the Agency has broad powers to order that corrective measures be taken – such as purchasing or modifying equipment, changing or developing a policy or procedure, and enhancing a training program.

Reasonable accommodation will be the most appropriate accommodation that:

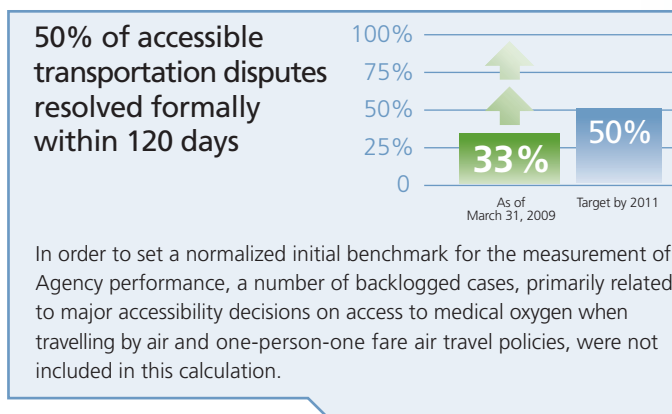
- respects the dignity of the individual;
- meets individual needs; and
- promotes the independence, integration and full participation of persons with disabilities in the federal transportation network, while not causing undue hardship to the transportation service provider.

In each case, what is considered reasonable is a matter of degree and depends on a balancing of the interests of persons with disabilities with those of the transportation service provider.

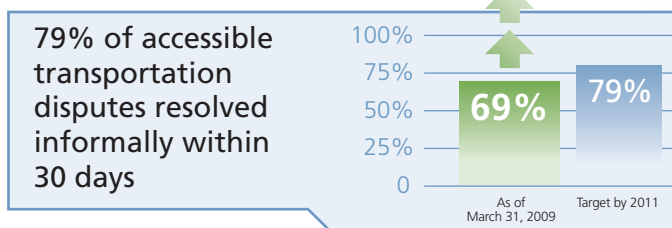
Streamlining the resolution of accessibility disputes

In 2008-09, a significant backlog of accessibility cases was closed, which has contributed to the Agency's substantial progress in meeting its performance targets on the resolution of accessibility disputes. The Agency is well on its way to meeting these goals.

Performance Target to be achieved by 2011



Performance Target to be achieved by 2011



That being said, the issues raised in accessibility cases are often highly complex and have wide-ranging implications for stakeholders. This complexity, along with the in-depth analyses

For statistics on disputes involving the mobility of persons with disabilities, go to www.cta.gc.ca/eng/access-statistics.

For more on resolving accessibility disputes, go to www.cta.gc.ca/eng/access-disputes.

In its Decision, the Agency determined that passenger-supplied oxygen, in whatever form permitted by safety and security regulations, is the most appropriate accommodation.

required, can have a significant impact on the length of time required to issue fair and reasonable rulings.

Passengers requiring medical oxygen

On June 26, 2008, the Agency released its final Decision on 25 complaints against Air Canada and one complaint against WestJet regarding the mobility of persons who require medical oxygen to travel by air.

When the complaints were first filed in 2005, the Agency found that both carriers' policies on medical oxygen presented systemic obstacles to the mobility of travellers who require this service. In 2007, WestJet modified its policy, thereby removing the obstacle.

Although at the time Air Canada did not allow passenger-supplied gaseous oxygen, it provided its own gaseous oxygen service to passengers for a fee. Air Canada has since changed its policy to allow the use of passenger-supplied Portable Oxygen Concentrators (POCs) on its domestic, transborder and international flights.

The Agency accepted Air Canada's gaseous oxygen service as a reasonable alternative to passenger-supplied gaseous oxygen for domestic flights, provided it implements corrective measures, including:

- that its gaseous oxygen service be provided free of charge; and
- that a continuous oxygen service be provided, i.e. prior to boarding, during connections and upon arrival at final destination.

Full compliance is expected by June 26, 2009.

Implementation of previous rulings

2008-09 saw progress on the implementation of Agency decisions issued in previous years. Significant headway was made by VIA Rail Canada to address the accessibility problems presented by its Renaissance passenger cars.

VIA will submit detailed design plans and an implementation schedule to the Agency for approval in September 2009.

“We are very appreciative of the ongoing relationship we have established with Agency staff. Their willingness to provide informal guidance and expert advice continues to be invaluable.”

– Paul Côté, President and
Chief Executive Officer,
VIA Rail Canada

The Agency also followed up on a previous ruling, in which OC Transpo – a public transit service operating in Ottawa and Gatineau – was ordered to ensure drivers call out stops for persons with visual impairments, and to implement corrective measures within a reasonable timeframe.

The Agency denied OC Transpo's request for an extension to allow for the implementation of corrective measures, as well as time to purchase and install an automatic call-out system. On March 11, 2009, the bus service was ordered to comply with the ruling within 20 days.

Implementation by Air Canada, Jazz Air and WestJet of the 2007-08 one-person-one-fare Decision was realized as required by January 10, 2009. Following unsuccessful attempts to appeal the Decision to both the the Federal Court of Appeal and the Supreme Court of Canada, the carriers have now implemented a one-person-one-fare policy for persons with severe disabilities who travel within Canada.

The Decision means that, for domestic services, the airlines 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 for purposes of travel.

Resolving Air Travel Complaints

Each year, the Agency receives a large number of complaints from air travellers related to the problems they have experienced with air carriers operating publicly available services to, from or within Canada.

The Agency can deal with such issues as:

- Baggage (e.g. damaged, delayed, excess, liability, lost, size limits, theft);
- Flight disruptions (e.g. cancellation, missed connection, revised schedules);
- Tickets and reservations (e.g. lost, refunds, restrictions, availability of seats, cancellation);
- Denied boarding (e.g. inability to fly as a result of carrier overbooking);
- Refusal to transport (e.g. late check-in, reconfirmation, travel documents);
- Passenger fares and charges;
- Cargo (e.g. transportation of animals, and delayed, damaged or lost cargo); and
- Carrier-operated loyalty programs (e.g. Advantage, World Perk or Skymiles, but excluding loyalty and frequent shopper programs such as Aeroplan and Air Miles).

For statistics on air travel complaints, go to www.cta.gc.ca/eng/atc-statistics.



In 2008-09, the Agency received 901 new air travel complaints. It also processed 1,209 complaints, some of which were received in the previous year.

676 of these cases were closed through the Agency's informal investigation process.

Of these,

6 were determined to be outside the Agency's mandate;

54 were withdrawn or dismissed;

607 were settled through facilitation; and

9 were referred to the Agency's formal adjudication process.

121 cases were still undergoing facilitation at year end.

Additionally,

1 air travel dispute was resolved through mediation;

23 were resolved through formal adjudication; and

14 cases were still in formal adjudication at year end.

Facilitating the resolution of air travel complaints

The majority of air complaints are resolved informally through a facilitation process. Complaints are assessed against the carrier's tariff – the published terms and conditions of services, including fares, rates and charges – as well as Canadian transportation law and international conventions.

Where it appears the carrier's obligations have not been met, Agency staff will approach the carrier and informally attempt to facilitate a resolution of the complaint consistent with these obligations.

The Agency does not have jurisdiction over issues related to safety, which are referred to Transport Canada. The Agency also does not have the mandate to deal with complaints involving the quality of air carrier services such as the attitude of airline staff. Such issues fall solely within the purview of airline management.

The Agency is, however, required by law to report on the number and nature of all air travel complaints received.

During 2008-09, the Agency received 891 new air travel complaints as compared with 954 in 2007-2008.

- 319 complaints submitted to Agency staff without first being brought up with the carrier were referred for resolution between the complainant and the carrier;

- 572 complaints were received from individuals who had already attempted to resolve their disputes with the carrier and were dissatisfied with the outcome.

Agency staff closed 676 complaints through its informal resolution process as compared with 683 in 2007-2008. The slight reduction in the number of complaints facilitated may be in part attributable to Zoom Airlines' discontinuation of operations, as well as increased informal resolution of complaints by travellers directly with carriers, before even approaching the Agency.

Providing information to stranded passengers

When Zoom Airlines suddenly ceased its operations in the summer of 2008, many stranded passengers turned to the Agency for help. Although it could not provide direct assistance, the Agency immediately set up an emergency notice on its Web site and provided extensive information to its call centre so as to help inform passengers. E-mail and telephone enquiries were referred to those who could help.

Air travel complaint trends monitored through the Agency's facilitation process

Canadian air carriers

434 complaints about eight Canadian carriers were investigated, compared with 412 complaints investigated in 2007-08 and 432 in 2006-07. Most of the complaints that were investigated were about Canada's major carriers, although smaller carriers accounted for 9% of all complaints.

Although more complaints were investigated last year about Air Canada and its regional partner, Jazz Air, the number of complaints concerning most other carriers was relatively stable. Fewer complaints were received about Zoom Airlines, which ceased operations in August 2008.

The bulk of air travel complaints received by Agency staff about Canadian air carriers concerned flight disruptions, quality of service and baggage issues.

Foreign air carriers

2008-09 saw a marked increase in the number of complaints filed about U.S. carriers – up to 48 from 29 last year – and a significant drop in the number of complaints related to European Union air carriers, which went from 112 last year to 69 in 2008-09. This is in part attributable to the increase in the number of complaints reported about U.S. carriers such as United and Northwest Airlines coupled with the reduction

The Agency has redesigned the way it captures and measures client feedback about the facilitated air travel complaints process. This new approach will be launched early in 2009-10.

in the number of complaints about other foreign carriers such as British Airways. It is also worth noting a significant reduction in the number of complaints filed about carrier Globespan in its second year of operation – down to 3 in 2008-09 as compared to 21 in 2007-2008.

Categories of complaints

Quality of service continues to be a concern for air travellers – even though it is outside the Agency's mandate to investigate complaints about such issues. However, this category no longer represents the most common type of issue cited in complaints received in 2008-09, having moved down to second place. It was displaced by a rise in the number of difficulties encountered regarding flight disruptions.

Flight disruptions were the most common issue raised in complaints brought to the Agency's attention in 2008-09, having been cited 332 times. Issues concerning delayed, lost or damaged baggage, and other baggage-related concerns, were cited 313 times in complaints.

Resolving air disputes through formal adjudication

The Agency will, through its formal adjudication process, investigate complaints when persons or shippers believe that a carrier has failed to apply its tariff, or the provisions of a carrier's tariff are unreasonable or unduly discriminatory.

In 2008-09, the Agency issued 23 formally adjudicated decisions.

Of these,

- 19 related to allegations that a carrier had failed to respect its tariff; and
- 4 related to allegations that the provisions of a carrier's tariff were unreasonable.

The following provides highlights of these Agency Decisions.

On My Way program ruled just and reasonable

In November 2008, the Agency issued a ruling on Air Canada's On My Way program, following a complaint that the program puts passengers who choose not to purchase it at a disadvantage. The complainant alleged that On My Way allows Air Canada to charge for services that would normally fall under its obligations in the event of a flight disruption.

The Agency found that the complainant failed to provide compelling evidence to substantiate the allegations. However, the Agency directed Air Canada to ensure that its tariffs and corporate communications draw a clear distinction between the rights of passengers who purchase On My Way and those who do not. It also instructed



the carrier to ensure that the introduction of On My Way does not adversely affect the rights of those passengers who choose not to purchase the program.

Liability for loss of items accepted as checked baggage

The Agency received a complaint that Air Canada had refused to compensate a passenger for the loss of certain items from the passenger's baggage, because it was exempt from liability for such a loss under its tariff.

The Agency determined that under the *Montreal Convention*, in the case of international carriage, if a carrier agrees to transport checked baggage, the carrier is liable for loss or damage while the baggage is in its care and control. The carrier is not liable if the damage resulted from an inherent quality or defect of the baggage.

Consequently, the Agency ordered Air Canada to compensate the complainant. The Agency also ordered Air Canada to revise its tariff to ensure that its liability provisions with respect to checked baggage are in accordance with the *Montreal Convention*.

Balancing safety concerns and privacy rights

Following a complaint regarding Lufthansa's refusal to transport a passenger until she obtained a medical certificate verifying her fitness to travel, the Agency determined that Lufthansa's tariff failed to clearly set out its policy regarding the carriage of pregnant passengers.

At the time, Lufthansa's policy implied that all pregnant passengers should obtain a medical certificate within 72 hours of each flight or risk flight refusal. The Agency determined that this unduly intrudes on the privacy of pregnant passengers, that Lufthansa had not properly applied its tariff, and that the tariff should be amended to clearly reflect Lufthansa's policy for the carriage of pregnant passengers.

The Agency directed Lufthansa to ensure that its tariff reflects a reasonable balance between the legitimate safety concerns of the carrier and the privacy rights of pregnant passengers.

For more information on Agency Decisions, go to www.cta.gc.ca/eng/decisions.



For more information on resolving rail-related disputes, go to www.cta.gc.ca/eng/rail-disputes.

Resolving Rail Disputes

Part of the Agency's mandate is to help resolve disputes between railway companies and other parties, or between railway companies.

In most cases, railway companies and other parties can resolve disputes by negotiating agreements themselves. When negotiations

In 2008-09, the Agency resolved 50 rail dispute cases.

Of these,

- 15 were resolved through facilitation;
- 15 were resolved through mediation; and
- 20 were closed through formal adjudication.

In addition, the Agency determined three disputes were eligible to be referred to Final Offer Arbitration.

break down, a number of dispute resolution alternatives are available, ranging from facilitation to formal adjudication.

The Agency investigates complaints and applications on the following topics:

- Rail noise and vibration
- Railway line construction, and road, utility and private crossings
- Transfer and discontinuance of railway lines
- Interswitching
- Running rights and joint track usage
- Level of service
- Public passenger services
- Incidental charges, such as fuel surcharges

Rail noise and vibration

In October 2008, after extensive consultations, the Agency published its *Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration*. Developed to assist

“[The Rail Noise and Vibration Guidelines] are a great first step and we’ll monitor them to see how they work out in the real world during the next three years. [The Agency] wants the process to produce a settlement that all parties are satisfied with.”

- Jeff McConnell,
Federation of Canadian Municipalities

individuals, municipalities, railway companies and other parties in resolving these types of disputes, the Guidelines explain clearly:

- what collaborative measures parties must follow before the Agency investigates a complaint;
- what elements are considered in determining whether railway construction or operations have caused only such noise and vibration as is reasonable; and
- how to file a complaint, what information must be submitted, as well as the process to be followed.

The guidelines require parties to a rail noise or vibration issue to engage in a meaningful dialogue in an effort to explore available solutions in a constructive manner prior to coming to the Agency with a formal complaint. A newly-formed technical advisory committee will provide expert advice to the Agency on an ongoing basis.

In 2008-09, the Agency received eight new rail noise and vibration complaints, and closed seven others.

Of these,

- 6** were resolved through mediation;
- 1** complaint was dismissed after being referred to formal adjudication.

Construction of rail lines

In 2008-09, the Agency was involved in eight ongoing environmental assessment processes for proposed rail line construction projects, from coast to coast. Another 23 environmental assessment processes for projects such as road and utility crossings required Agency involvement.

After assessing the environmental impact of the projects under the *Canadian Environmental Assessment Act*, the Agency approved the construction of two new railway lines, both located in the Alberta Industrial Heartland area. The Agency approved the construction of a spur line to serve Petro-Canada's Fort Hills upgrader facilities. The Agency also issued a cease-and-desist order to CN for railway operations at its Scotford Yard transload facility, where construction of a railway line had begun

Performance Target

to be achieved by 2008

100% compliance with prescribed mitigation conditions to reduce environmental, economic and social impacts of railway construction projects



Status as of March 31, 2009: no applications for projects requiring mitigation conditions received in 2008-09

For detailed statistics on railway infrastructure and construction, go to www.cta.gc.ca/eng/rail-stats.

without an environmental assessment and prior approval by the Agency. Once a mitigation plan was in place, construction was approved and the operation was allowed to continue.

Crossings

In 2008-09, the Agency processed 127 agreements filed by parties that had successfully conducted their own negotiations related to crossings. These agreements became Orders of the Agency. Where no agreement could be reached, the Agency was called upon by the parties involved to assist them in reaching a fair and equitable resolution.

The Agency issued decisions on 12 crossings through its formal adjudication process, and closed a further 14 cases through facilitation or mediation. In addition, four cases were closed internally or withdrawn.

Of these,

- 23 concerned private or road crossings; and
- 7 concerned utility crossings.

Applications dealing with recent legislative changes

Section 120.1 of the *Canada Transportation Act* aims to protect shippers from unreasonable charges or terms. On the basis of this new provision, Peace River Coal, a shipper, argued to the Agency that it was being charged an unreasonable fuel surcharge. However, as it operates under a confidential contract with a railway, the case was dismissed.

A level of service complaint filed by the Central Alberta Transloading Terminals Limited along with a related issue under section 120.1 was being heard at year end.

Additionally, under a new dispute resolution provision designed for public passenger service providers, VIA Rail Canada and the Hudson Bay Railway have requested that the Agency determine the rate VIA Rail will pay for the use of Hudson Bay Railway infrastructure.

Shipper complaints and determinations

Shippers using railways to transport Western grain and other types of goods are turning to the Agency on a more frequent basis to resolve related disputes. The Agency received six new level of service complaints from shippers against railways in 2007-08 and four in 2008-09, compared to only one in 2006-07.



In 2008-2009, 36% more disputes and applications involving shippers were brought to the Agency's attention than in 2007-08. Among them, the Agency received:

- 4 new level of service complaints from shippers against railways;
- 3 applications for interswitching or extended interswitching;
- 1 request for clarification of the applicability of specific sections of the *Canada Transportation Act* related to running rights;
- 1 application for the production of a rail tariff;
- 1 request by a public passenger service provider to set rates for use of a rail line; and
- 2 applications for review of the reasonableness of a railway's terms and conditions.

Level of service

On September 25, 2008, the Agency ruled on complaints received from six shippers that CN was not providing an adequate and reasonable level of service for the movement of Western grain for crop year 2007-2008.

The Agency found it appropriate to set a performance-based benchmark to assess if CN was meeting its basic level of service obligations.

Based on this benchmark, the Agency found that while CN had fulfilled its obligations to the Canadian Wheat Board and Providence Grain Group Inc., it was providing an inadequate level of service to four smaller grain companies. The Agency ordered CN to immediately provide a level of service to these four shippers as set out in the benchmark. The Canadian Wheat Board was granted leave to appeal the Agency's Decision to the Federal Court of Appeal.

Interswitching disputes

CN asked the Agency to resolve an interswitching dispute with American railway company BNSF. Interswitching allows traffic to be transferred from the lines of one railway company to another, at prescribed rates set by the Agency.

CN argued that some of its movements of BNSF rail cars did not constitute interswitching within the meaning of the *Canada Transportation Act*, and as such should be subject to commercial discussions. Furthermore, BNSF and CN disagreed on what constitutes an interchange, which is defined under the Act as a place where regulated interswitching occurs.

In deciding that rail activities between BNSF and CN do constitute interswitching, the Agency applied a broad interpretation of what constitutes a "place," as a narrow interpretation would eliminate many existing interchange points and restrict competition. CN has applied for leave to appeal the Agency's Decision to the Federal Court of Appeal.

Benchmarks specify a required outcome, but leave the means of achievement up to the service provider.

For more information on resolving marine disputes, go to www.cta.gc.ca/eng/marine-disputes.

Resolving Marine Disputes

Marine disputes can involve user fees at ports, charges for pilotage services, or coasting trade applications for foreign or non-duty paid ships to work in Canadian waters.

The Agency examines marine complaints on the following topics:

- disputes related to coasting trade applications;
- tariffs proposed by pilotage authorities;
- fees fixed by port authorities;
- final offer arbitration of northern resupply carrier disputes; and
- unreasonable price increases or reductions of service by a shipping conference.

Fees for pilotage services

In 2008-09, tariff proposals or amendments were published by four pilotage authorities:

- the Great Lakes Pilotage Authority;
- the Atlantic Pilotage Authority;
- the Pacific Pilotage Authority; and
- the Laurentian Pilotage Authority.

The Agency did not receive objections to these tariff changes.

Fees set by port authorities

No complaints were filed with the Agency in 2008-09 regarding fees set by port authorities. However, during 2008, Bill C-23 – amending the *Canada Marine Act* – received Royal Assent.

This Bill strengthened the operating framework for Canada Port Authorities by modifying the current borrowing regime, providing for access to contribution funding and clarifying some aspects of governance.



Industry Regulation and Determinations



The Agency's work as an economic regulator

The Agency oversees the economic regulation of modes of transportation under federal jurisdiction, including:

- licensing air and rail carriers and acting as the aeronautical authority for Canada;
- determining whether the terms and conditions of air travel are just and reasonable;
- approving the adequacy of the protection of advance payments made to air carriers;
- setting railway revenue caps for moving Western grain;
- setting financial and costing frameworks for certain federally regulated railways;
- establishing the net salvage value of railway lines to facilitate their orderly transfer; and
- determining if Canadian ships are available and suitable to perform services which a resident of Canada has requested be provided by foreign ships in Canadian waters.

The Government of Canada's national transportation policy permits the market to self-regulate. However, it also acknowledges

that regulation can be required to meet public objectives or in cases where parties are not served by effective competition.

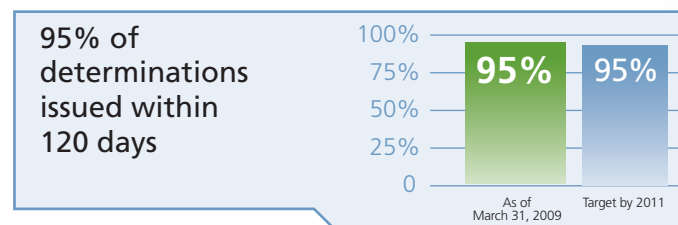
Overall, in 2008-09, the Agency issued approximately 2,400 discretionary and administrative rulings which were required to support the effective regulation of the federal transportation system.

For more on industry regulation and the issuance of determinations, go to www.cta.gc.ca/eng/industry.

A challenge met

With respect to its determinations, the Agency's Strategic Plan set an ambitious goal: that by 2011, the vast majority of these be issued within 120 days once all required information has been received. This objective has been achieved ahead of schedule.

Performance Target to be achieved by 2011



Reviewing regulations and regulatory instruments

The Agency is giving higher priority to the review and updating of regulations and regulatory instruments. The objective is to be more proactive and responsive in adapting the Agency's regulatory framework to legislative and policy changes.

Online posting of tariffs

Several small amendments to the *Air Transportation Regulations* were made in 2009 to reflect legislative changes as a result of Bill C-11, *An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts* (2007), receiving Royal Assent.

Specifically, changes were made to reflect the new requirement for air carriers flying to and from Canada, and who sell transportation through their Web sites, to post their terms and conditions of carriage on these same Web sites. Additionally, signage requirements for domestic and international carriers were harmonized. The revised regulations are now in effect.

Foreign ownership limits

In March 2009, Bill C-10, the *Budget Implementation Act (2009)* was granted Royal Assent. The Bill included a new framework for the definition of a Canadian-owned and controlled company under the *Canada Transportation Act*. The Government has indicated its intent to

increase the foreign ownership limit of Canadian air carriers from 25% to 49%, with the increase to be determined through bilateral and multilateral air transport negotiations and agreements.

The Agency will hold consultations with the industry before developing regulations and guidelines to implement this government policy.

Reviewing the Air Transportation Regulations

The Agency is also undertaking a general review of its *Air Transportation Regulations* to reflect changes in policy and industry practices. Consultations with stakeholders on proposed amendments are expected to begin in mid-2009.

Interswitching review

A shipper at the origin or destination of a rail haul may have its cars interswitched from one carrier to another at prescribed rates, if the shipper's siding is within a 30-kilometre radius of the interchange point. Under certain circumstances, the Agency can permit interswitching beyond the 30-kilometre limit.

As of March 31, 2009, the Agency was considering comments received as part of the consultation process on its review of the *Railway Interswitching Regulations*. The review must be undertaken every five years as per the *Canada Transportation Act*. Of key interest are the proposed interswitching rate changes, as well as other issues raised by parties.



Review of railway costing

To determine railway costs for regulated activities, the Agency relies on the *Uniform Classification of Accounts and Related Railway Records* (UCA) and the *Railway Costing Regulations*. Federally-regulated railways use the UCA to report their operating expenses, revenues and other statistics, while the costing regulations set out the items and factors for making railway costing determinations, including cost of capital and depreciation. A comprehensive, two-phase technical review by the Agency of the UCA is underway.

Phase one of this review was completed in February 2009, while phase two was officially launched in January 2009. The Agency also intends to initiate a review of the *Railway Costing Regulations* to bring them up to date.

Regulating Air Transportation

The Agency issues licences, authorities and charter permits to Canadian and foreign air carriers offering publicly available services within or to and from Canada, and enforces all applicable licensing requirements. It also participates in the negotiation and implementation of international air agreements as part of the Government of Canada negotiating team, and administers international air tariffs.

The Agency also ensures consistency with Canadian legislation and regulations with respect to:

- air fares;
- rates and charges; and
- terms and conditions of carriage.

Licensing

The Agency licenses Canadian applicants to operate air services within Canada, and licenses Canadian and foreign applicants to operate scheduled and non-scheduled international air services to and from Canada.

The Agency processed 1,038 air licensing activities over the course of 2008-09, including applications for new licences, cancellations, suspensions, and reinstatements.

For more information on the regulation of Canada's air transportation sector, go to www.cta.gc.ca/eng/air-industry.



For detailed statistics on the issuance of licences, go to www.cta.gc.ca/eng/licensing-stats.

Of the 137 applications for new licences processed in 2008-09:

- 1 was denied;
 - 6 were withdrawn;
 - 130 resulted in a licence being issued.
- Of these,
- 9 were issued to four Canadian applicants for the operation of a scheduled international air service using large aircraft between Canada and a foreign country:

Canadian Airline	New licences issued for services between Canada and...
Air Canada	Luxembourg, Israel, Portugal, Saudi Arabia
Air Transat	Panama
WestJet	Barbados
Sunwing Airlines	Antigua & Barbuda, Barbados, Mexico

In fulfilling the above responsibilities, the Agency continued to maintain a licensing regime that ensures that publicly-available air services:

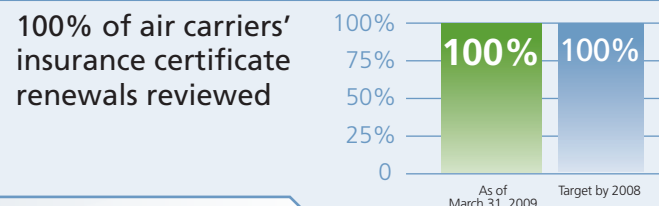
- are Canadian-owned and controlled, when operating within Canada;
- have appropriate liability insurance;
- when they are Canadian, meet certain financial requirements when they start operations; and
- hold a Canadian aviation document issued by Transport Canada.

Financial fitness

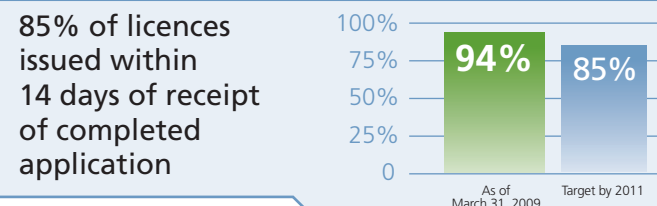
In 2008-09, the Agency completed four reviews of the financial fitness of Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats. The purpose was to ensure they had a reasonable chance of success, which minimizes disruptions in service and protects consumers. All four applicants proved they had enough liquid funds to cover all start-up, operating and overhead costs for 90 days and were approved by the Agency.

For more on the Agency's air licensing activities, including an air carrier licence search tool, go to www.cta.gc.ca/eng/licensing.

Performance Target to be achieved by 2008



Performance Target to be achieved by 2011



Canadian ownership and control

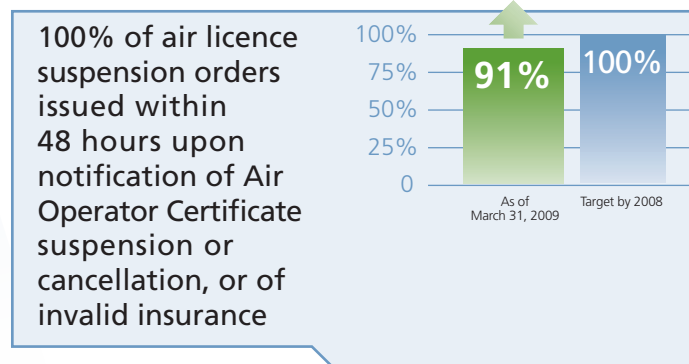
The Agency reviewed 60 Canadian applicants already operating or proposing to operate domestic or international air services in 2008-09. Eleven reviews involved major investigations because the companies had complex ownership structures or there were non-Canadian minority shareholders or business associates who might have exercised control over the applicant.

After verifying that the companies were incorporated in Canada and that at least 75% of their voting interests were owned and controlled by Canadians, the Agency approved 59 applications. One was denied on the basis that the applicant would in fact no longer be controlled by Canadians.

The Agency has adopted service standards for its air licensing activities in order to help it better respond to a fast-moving air industry, while fulfilling its regulatory responsibilities.

Performance Target

to be achieved by 2008

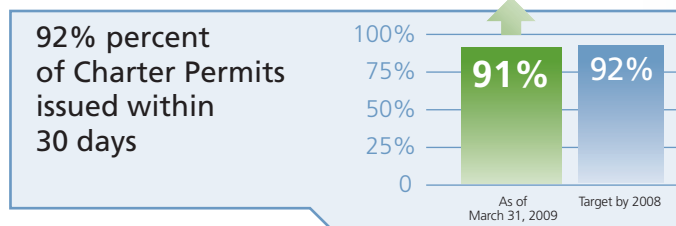


Charters

A tour operator may contract with an air carrier for part or all of the passenger seating capacity of an airplane. This activity is called chartering. The tour operator then sells these seats to the public, usually through a travel agent.

Performance Target

to be achieved by 2008



The Agency's permit system for international charter operations ensured the protection of advance payments received by airlines in respect of international passenger charter flights originating in Canada. A letter of credit – or other agreement – serves as a guarantee that advance payments by the chartering tour operator are reimbursed rapidly should the air carrier not fulfill its obligation to operate the flight.

Sometimes, carriers are asked to provide a charter flight on short notice between Canada and another country. 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 2008-09, the Agency issued 1,215 charter permits, essentially meeting its performance target.

For more information on tariffs, go to www.cta.gc.ca/eng/tariffs.

Tariffs

Essentially, a tariff is the “contract” between the client and the carrier. An air carrier’s tariff contains its published fares, rates, charges, and related terms and conditions of carriage. A ticket is proof that a contract of carriage exists between the carrier and the client, and only contains some of the information that appears in a tariff. However, few consumers are aware of this fact.

Improving consumer awareness

In 2008-09, the Government of Canada introduced Flight Rights Canada, a campaign directed at enhancing consumer protection by raising consumers’ awareness of their rights. This initiative followed legislative and regulatory changes made over the past few years that now require all air carriers, both domestic and international, to make their tariffs available for public inspection upon request.

As a result of regulations developed by the Agency, Canadian and international carriers who operate within Canada, and who sell transportation through their Web sites, are now required to post their terms and conditions of carriage online.

Air carriers must now post signs at each of their business offices – including airport counters and baggage drop-off areas – indicating that their tariff is available for public inspection. These same Agency-led regulatory changes also harmonized signage requirements for both domestic and international carriers.

Following carrier-airport consultations, the Agency developed a recommended language that meets all legislative criteria. A common-purpose sign was developed, and is being actively promoted to carriers, in an effort to facilitate a more consistent approach. The signage is available for download by air carriers on the Agency’s Web site.

Tariff simplification

Tariffs are complex documents, spanning dozens if not hundreds of pages that detail the fares, rates or charges for – and the related terms and conditions of – carriage. Within certain limits, air carriers are allowed to set their own prices and terms and conditions of service, which are set out in a tariff.

The Agency has committed to assisting Canadian carriers to better communicate the nature of their terms and conditions, notably through the use of plain language.

In order to respond to concerns about the clarity and completeness of tariffs, the Agency is creating “model tariffs” which clearly set out the format and tone to be used – and highlight the importance of making the terms and conditions of carriage understandable to Canadians.

In 2009, to encourage air carriers to simplify the terms and conditions found in their tariffs, the Agency began drafting best practices for tariff provisions.

The Agency is first focussing on educating carriers about their new responsibilities. However, carriers who do not comply with signage requirements may be subject to a fine.

These best practices will address several different topics, such as:

- denied boarding;
- schedules;
- delays;
- cancellations; and
- refusal to transport.

Bilateral air transportation agreements

This year, the Agency continued to administer international air tariffs in order to ensure that bilateral agreements are implemented fairly and balance the interests of all parties.

In 2008-09,

114 Decisions and Orders were issued relating to bilateral air agreements and arrangements.

Of these,

- 76 concerned code-sharing or the leasing of aircraft with flight crews;
- 38 dealt with applications for extra-bilateral authorities.

Over the course of 2008-09, the Agency was a member of the Canadian government team involved in the historic negotiation of a comprehensive agreement for air services between Canada and all 27 European Union

member states. The EU Council of Transport Ministers approved the agreement on March 30, 2009, and it is expected to be implemented in the first half of 2009-10. Additionally, the Agency participated in the negotiation of an “Open-Skies”-type agreement with the Dominican Republic, as well as expanded or new agreements with the Philippines and Panama.

“Open-Skies”-type agreements with other countries allow any number of air carriers from Canada and the partner country to operate either scheduled passenger or cargo air services to and from either country, as often as they desire.

The Agency can also authorize foreign air carriers to use certain airports to transship international air cargo, even if these rights are not included in Canada’s bilateral air transport agreements. In 2008-09, the Minister of Transport identified the following airports for the carriage of international cargo shipments coming from and destined for points outside the territory of Canada:

- Toronto Pearson International (July 2008)
- Halifax Stanfield International (July 2008)
- Prince George (July 2008)
- London International (December 2008)

For more information on the Agency’s role in bilateral relations, go to www.cta.gc.ca/eng/bilateral.



This is the largest amount that any railway has ever exceeded its revenue cap, and only the second time that both railways are over their caps for the same year.

Regulating Rail Transportation

The Agency determines the railway revenue caps for the movement of Western grain and the regulated railway interswitching rates. It also processes applications for certificates of fitness for the proposed construction and operation of railways, and approvals for railway line construction.

Revenue caps for the movement of Western grain

The Agency regulates the revenue earned by the Canadian National Railway Company (CN) and the Canadian Pacific Railway Company (CPR) for the shipping of grain from the Prairie provinces to terminals in Vancouver, Prince Rupert, Thunder Bay and Churchill.

In setting a maximum revenue entitlement or revenue cap for CN and CPR, the Agency protects grain shippers and farmers, while permitting both railways to maintain profitable ventures. The Agency has two main responsibilities in administering the program:

- determining whether CN and CPR have exceeded their cap in the previous crop year (in December of each year); and
- setting an annual inflation index for both railways for the upcoming crop year (in April of each year).

On December 30, 2008, the Agency announced that both railways had exceeded their revenue caps for crop year 2007-08:

- CN's revenue from the moving of grain was \$409,267,319, exceeding its cap by \$25,961,880; and
- CPR's revenue from grain shipments was \$407,440,160, exceeding its cap by \$33,806,200.

The cap amounts were based on the Agency's final adjustment to the volume-related composite price index, which was decreased to 1.0639 for crop year 2007-2008. This adjustment reflects the actual costs incurred by CN and CPR for the maintenance of grain hopper cars and reduces the historical maintenance costs that were embedded in the revenue caps.

On November 24, 2008, CN and CPR's appeal to the Federal Court of Appeal on the Agency's Decision concerning the adjustment of the volume-related composite price index was dismissed with costs. Both railway companies sought leave to appeal the Federal Court of Appeal's judgement to the Supreme Court of Canada, which was denied on April 23, 2009.

As per Transport Canada regulations, the excess amounts, plus a fifteen-percent penalty of \$3,894,282 for CN and \$5,070,930 for CPR, are to be paid out to the Western Grains Research Foundation, a farmer-funded and directed organization set up to fund research that benefits Prairie farmers.

Certificates of fitness

Certificates of fitness are issued when the Agency is satisfied that a company proposing to construct or operate a railway within its legislative authority has adequate third-party liability insurance.

In 2008-09, the Agency issued a new certificate to 6970184 Canada Ltd., a wholly-owned subsidiary of Great Sandhills Terminal Ltd., which acquired the McNeill Spur from CPR – a 5.4-mile railway which crosses the Saskatchewan-Alberta border near Burstall, Saskatchewan.

In addition, it approved five variations to existing certificates in order to reflect changes in railway operations and processed two cancellations.

Net salvage value

There are various points during the discontinuance of a railway line when the Agency can be called upon to assist in the process by determining the net salvage value of the railway assets.

In 2008-09, the Agency continued to deal with three net salvage value determinations:

- CPR's Radville and Bromhead Subdivisions, in Saskatchewan;
- CN/CPR's CASO Subdivision in St. Thomas, Ontario; and
- CSX's Sarnia Subdivision, in the municipality of Chatham-Kent, Ontario.

The municipalities involved in the negotiations regarding CPR's Radville and Bromhead subdivisions were granted leave to appeal both the interim and final Agency rulings by the Federal Court of Appeal. This same court also granted CPR leave to appeal the Agency's final Decision regarding the determination of the net salvage value of the Radville Subdivision. A decision is expected in 2009-10. Additionally, the Agency dismissed the application by the City of St. Thomas involving CN and CPR's CASO Subdivision, as a result of an earlier decision of the Federal Court of Appeal which ruled that the statutory discontinuance process had been completed prior to the application by the City of St. Thomas.

In an ongoing case involving CSX's Sarnia Subdivision and the municipality of Chatham-Kent, the Agency issued a precedent-setting interim decision. It stated that where evidence submitted by parties to a dispute is not sufficient to enable a fully-informed net salvage value determination, the Agency has the obligation and authority to require the parties to provide information – such as environmental site assessments, remediation valuations or professional land appraisals – at their cost.

The Agency further determined that it would decide and account for any resulting equalization of costs that may be required in its final net salvage value determination. A final decision is expected in 2009, following the completion of environmental assessments.

For a list of federally-regulated railway companies, go to www.cta.gc.ca/eng/rail-industry.

Regulating Marine Transportation

The Agency administers aspects of the *Coasting Trade Act*, which is designed to protect the interests of Canadian vessel operators when dealing with applications to use foreign or non-duty paid ships in Canada.

Coasting trade applications

The Agency is responsible for determining if Canadian ships are suitable and available to operate commercial or non duty-paid services in Canadian waters, which may otherwise be provided by foreign ships upon request by a resident of Canada.

Once the Agency has determined that no Canadian ship is suitable and available to provide the service or perform the activities required, it is the responsibility of the Minister of Public Safety and Emergency Preparedness to issue the licence.

A review of the Agency's coasting trade guidelines is underway, with expected completion in 2009-10. Updated guidelines will further clarify the Agency's expectations with regards to coasting trade applications. To streamline the coasting trade application process, the Agency is currently implementing an online and e-mail application notification system, as well as creating a subscription-based contact list.

These new measures will allow the Agency to continue to provide efficient service and meet its performance target for processing coasting trade applications.

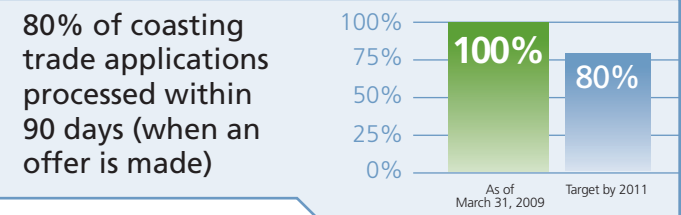
For statistics
on marine
transportation,
go to
[www.cta.gc.ca/
eng/marine-
statistics](http://www.cta.gc.ca/eng/marine-statistics).

In 2008-09, the Agency processed 135 coasting trade applications.

Of these,

- 114 were approved in the absence of offers from Canadian operators;
- 10 were approved despite offers being submitted by Canadian operators;
- 2 were denied; and
- 9 were withdrawn.

Performance Target to be achieved by 2011



Performance Target to be achieved by 2011



Enforcement and compliance



Agency enforcement officers administer the Agency's Inspections and Investigations Program.

The program is designed to encourage voluntary compliance with the *Canada Transportation Act*, the *Air Transportation Regulations* and the *Personnel Training for the Assistance of Persons with Disabilities Regulations*. The Agency also monitors compliance with the Agency's voluntary Codes of Practice on accessible transportation.

In 2008-09, Agency enforcement staff undertook 360 inspections.

Of these,

- 89 resulted in informal warnings;
- 13 resulted in formal warnings;
- 7 notices of violation were issued.

Enforcing legislative and regulatory provisions

The Agency's enforcement division conducts inspections and investigations across Canada, and can issue warnings and fines. Agency enforcement officers conduct inspections to ensure conformity with legislative and regulatory

requirements. These include periodic inspections of Canadian air carriers and transportation facilities, as well as targeted investigations.

In its 2008-2011 Strategic Plan, the Agency committed to continuing to uphold the stringent standards it applies where enforcement and inspections are involved.

Performance Target



Target Achieved

Compliance with the *Canada Transportation Act* and its attendant regulations by air licensees and persons subject to the *Personnel Training for the Assistance of Persons with Disabilities Regulations*, as determined by inspections:

- ✓ 100% compliance with the requirements to hold a valid licence, insurance and Air Operator's Certificate by 2008
Status as of March 31, 2009: 100%

For detailed statistics on enforcement, go to www.cta.gc.ca/eng/enforcement-statistics.

For more on the Agency's enforcement activities, go to www.cta.gc.ca/eng/enforcement.

Expanded monetary penalties

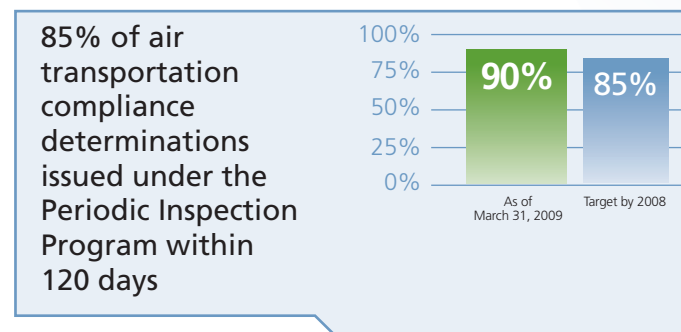
The *Canada Transportation Act* contains general enforcement provisions, which include the authority to impose administrative monetary penalties when a transportation service provider or terminal operator fails to comply with a legal requirement. However, these penalties are currently limited to the air industry.

In the coming year, the Agency will consider the proposal of changes to its regulations that would extend the power of Agency enforcement staff to issue penalties to the rail sector. This would provide the Agency with another tool to effectively enforce the Act and, more specifically, its rail-related Orders and Decisions.

Making tariffs available to consumers

Follow-up action was taken by the Agency with 45 air carriers, setting compliance deadlines with the new legislative requirement that all air carriers who sell tickets on their Web sites also post their tariffs on these sites. This resulted in full compliance by domestic carriers. Over the coming year, the Agency will focus its attention on bringing international carriers into compliance.

Performance Target to be achieved by 2008



Illegal advertising and possible sale of tickets

Following an investigation, the Agency issued a formal warning to Go Travel Direct – a direct-sell tour operator – for the sale and advertising of an air service from Canada to Europe without the air operator holding a licence. At the time, the Agency had not received an application from any airline requesting a licence or charter permit to operate the flights advertised by Go Travel Direct. Any application for a licence or charter permit is subject to the Agency's approval, which is not automatic.

Operating in Canada without a licence

Enforcement staff became aware that Medway Air, an American air service provider, was operating into Canada without holding an Agency licence. Enforcement officers issued a penalty of \$34,000 under the Administrative Monetary Penalties program. Upon being informed of the legislated requirements, Medway Air applied for both a Transport Canada foreign air operating certificate and an Agency non-scheduled international licence.

Monitoring compliance

The Agency's five voluntary Codes of Practice on accessibility and regulations on the carriage of persons with disabilities are now supported by a new monitoring framework intended to foster greater industry compliance with their provisions. Extensive outreach and educational initiatives continue to be an integral part of the framework, as they help parties know their rights and responsibilities regarding accessibility.

Although implementation of the Agency's accessibility Codes of Practice is voluntary, extensive consultations were held with service providers, with the expectation that they will comply with these standards.

Two compliance reports were prepared by the Agency, examining the degree to which the requirements on alternative communication systems used by terminal ground transportation companies and multiple formats, as laid out in

its *Code of Practice: Removing Communication Barriers for Travellers with Disabilities*, are being observed.

This Communication Code states that carriers and terminal operators are to develop and follow their own multiple format policies, ensuring that information related to travel by persons with disabilities is available in a format they can use, such as large print or electronic files. As of the end of this year, with one exception, all key terminal operators and carriers had implemented a multiple format policy.

The Code also requires that ground transportation service providers under contract to airports provide alternative communication systems for information and reservations, such as a TTY line. This is to ensure equal access to reservation and information lines for persons who are deaf or hard of hearing.

An investigation revealed full compliance with the Code provision at Canada's 24 key airports with respect to ground transportation provided by car rental companies.

Terminals across Canada are also expected to implement the standards defined in the *Code of Practice: Passenger Terminal Accessibility* by June 2009. Work is well underway to make national airports, railway stations and ferry terminals more accessible for persons with disabilities, with minimum accessibility standards defined all the way from the parking lot to the boarding area.

The Agency will continue to monitor provisions of the Communication Code, and to assist service providers in meeting them.

Assessment of the Act

Legislation and regulations are key instruments of public policy – they express the will of government and reflect the public interest. They also provide the Agency with the foundation upon which determinations are made that impact the behaviour of industries regulated by the Agency. It is important that industry regulations, including smart regulations, be current and reflect the realities of the operating environment.

To this end, within the context of the existing legislative and policy frameworks, the Agency plans to review and update, where appropriate, existing regulations, codes of practice and guidelines to ensure they are up to date, relevant and clear.

While the Agency shares responsibility for administering various Acts and their related regulations, including the *Canada Marine Act*, the *Pilotage Act*, the *Coasting Trade Act*, and the *Railway Safety Act*, the *Canada Transportation Act* is the Agency's enabling statute to implement the federal government's transportation policy.

As part of its Annual Report to Parliament, required by the *Canada Transportation Act*, the Agency is to include its "assessment of the operation of this Act and any difficulties observed in the administration of this Act."

In 2007-08, Parliament passed amendments to the *Canada Transportation Act*, providing important direction to the Agency and a stronger and wider mandate. The following table provides a summary of the status of these amendments.

General

Recent Amendment of the Act	Description of Recent Amendment of the Act	Summary of Status
Section 36.1: Mediation	Strengthened the Agency's authority to mediate disputes on matters within its mandate if the parties in dispute agree.	<p>An information kit on alternative dispute resolution (ADR) mechanisms offered by the Agency, including mediation, is now provided to clients.</p> <p>In 2008-09, there were a total of 38 requests to mediate disputes of which:</p> <ul style="list-style-type: none"> • 22 were successfully mediated; • 1 was not accepted by the Agency; • 3 were withdrawn; • 4 were declined by respondents; • 7 had no settlements; and • 1 had a partial settlement. <p>Of the 22 successfully mediated cases, 15 involved rail, one air, and six accessible transportation matters. Mediation is proving to be an effective mechanism for the Agency to deal with new areas of responsibility, in particular for rail noise and vibration.</p>
Section 36.2: Mediation or Arbitration	Provided authority to the Agency to mediate or arbitrate rail disputes on matters covered under Part III or IV of the Act which are outside the Agency's jurisdictional power.	No applications received.

Rail Transportation

Recent Amendment of the Act	Description of Recent Amendment of the Act	Summary of Status
<p>Section 95.1 to 95.4:</p> <p>Rail Noise and Vibration</p>	<p>Provided the Agency with authority to resolve noise and vibration complaints caused by the construction or operation of railways and public passenger rail services.</p>	<p>In 2008-09, the Agency resolved seven disputes involving rail noise and vibration, some of which were received in 2007-08. Six of these were resolved through mediation. One complaint was dismissed following formal adjudication.</p> <p>As required by the Act, the Agency issued guidelines, following extensive consultations, respecting the collaborative measures that parties must pursue before filing a complaint and the elements the Agency will consider in resolving such complaints. A technical advisory committee is also now in place to provide expertise to the Agency on best practices related to noise and vibration issues.</p>
<p>Section 120.1:</p> <p>Shipper Complaints</p>	<p>Permitted the Agency, upon a shipper's complaint, to investigate and, if found to be unreasonable, to change certain charges and conditions for the movement of traffic or provision of incidental services that may apply to more than one shipper.</p>	<p>Two complaints that raised incidental charges, one connecting it to level of service issues, were received. One application was dismissed on the basis that a confidential contractual agreement existed between the parties. The second case was still being heard at year end.</p>

Rail Transportation (cont'd)

Recent Amendment of the Act	Description of Recent Amendment of the Act	Summary of Status
<p>Section 141.1 to 146.5:</p> <p>Railway line transfers and discontinuances</p>	<p>Expanded provisions on railway line transfers and discontinuances of rail corridors in urban areas that could be used for urban transit purposes. Governments and urban transit authorities can also now apply to the Agency for a net salvage value determination (NSV) prior to accepting a railway company's offer to acquire a railway line.</p>	<p>Pursuant to section 146.3 of the Act, three NSV applications from municipal governments were filed with the Agency in 2007-2008 and decisions were issued in 2008-2009. The Agency had no jurisdiction to consider one municipality's application for a determination of NSV pursuant to subsection 146.3(1) of the CTA and the application was dismissed. The Federal Court of Appeal granted CPR, the Town of Bengough, and the Rural Municipality of Souris Valley No. 7 leave to appeal the Agency's NSV determinations contained in Decisions No. 378-R-2008 (Bengough) and 385-R-2008 (Souris).</p> <p>The Agency did not receive any applications for NSV determinations in 2008-09.</p>
<p>Section 152.1:</p> <p>Compensation for the use of facilities and services</p>	<p>Expanded the Agency's role to decide on matters such as compensation for the use of facilities and services when public passenger rail operators cannot negotiate a commercial agreement with a railway.</p>	<p>One application has been received. A decision is expected in 2009-10.</p>

Rail Transportation (cont'd)

Recent Amendment of the Act	Description of Recent Amendment of the Act	Summary of Status
Section 169.1:	Allowed for suspension of any final offer arbitration (FOA) process if both parties consent to pursue mediation.	No FOAs have gone to mediation.
Section 169.2: Final offer arbitration	Expanded final offer arbitration to groups of shippers on matters common to all shippers and relating to rates or conditions for the movement of goods, when the shippers make a joint offer.	No applications have been received.

Air Transportation

Recent Amendment of the Act	Description of Recent Amendment of the Act	Summary of Status
Section 66: Domestic pricing	Provided the Agency with the ability to take into consideration any information or factors that it considers relevant to make a complete assessment of allegations of unreasonable pricing on non-competitive routes and to compel a carrier to produce any information the Agency considers relevant.	No complaints have been received.

Air Transportation (cont'd)

Recent Amendment of the Act	Description of Recent Amendment of the Act	Summary of Status
<p>Section 67:</p> <p>Tariff information disclosure</p>	<p>Requires domestic air carriers to post signs prominently at their business offices, including airport locations, advising passengers that their tariff, including the terms and conditions of carriage, is available for public inspection.</p> <p>Requires domestic air carriers to post their terms and conditions of carriage on any Web site selling their domestic services.</p> <p>Enabled the Agency to make regulations requiring a licensee or carrier to display terms and conditions of carriage of its international air services on its Web site if used for selling these services.</p>	<p>Air carrier tariffs contain the terms and conditions of transportation and constitute the contract of carriage.</p> <p>These requirements provide for greater transparency by airlines and will allow passengers to be better informed of their rights and obligations. It is also expected that the requirements will help better manage expectations of all parties, thereby leading to fewer disputes and an improved travel experience.</p> <p>The Agency is working with air carriers and airports for posting signage. Suggested signage text has been provided to clearly indicate to passengers the availability of tariffs.</p> <p>As of March 31, 2009, all domestic carriers have posted their terms and conditions on their Web sites.</p> <p>The Agency has revised its regulations in line with these new requirements.</p> <p>The wording in tariffs can at times be technical and difficult to follow, which may affect the ability of consumers to understand the terms and conditions associated with air travel. To ensure that air carriers use language understandable by consumers, the Agency is developing "best practice" tariff language for consultation with industry with a view to facilitating greater clarity and plain language in their tariffs.</p>

Air Transportation (cont'd)

Recent Amendment of the Act	Description of Recent Amendment of the Act	Summary of Status
<p>Section 85.1:</p> <p>Air Travel Complaints</p>	<p>Integrated the Air Travel Complaints Program into the operations of the Agency, including the requirement to report on the number and nature of complaints received, the names of carriers and any systemic trends observed.</p>	<p>The Agency has integrated air travel complaints into its ongoing day-to-day operations.</p> <p>In 2008-09, the Agency received 901 new air travel complaints. It also processed 1209 air travel complaints, some of which were received in the previous year.</p> <ul style="list-style-type: none"> 676 of these cases were closed through the Agency's facilitation process. Of these, 6 were determined to be outside the Agency's mandate; 54 were withdrawn or dismissed; 607 were settled; 9 were referred to the Agency's formal adjudication process. <p>121 cases were still undergoing facilitation at year end.</p> <p>Additionally, one air travel dispute was resolved through mediation; 23 through formal adjudication; and, 14 cases were still in formal adjudication at year end.</p> <p>For timely public access on an ongoing basis, the Agency's Web site at www.cta.gc.ca also now provides regularly updated statistics to better inform the Canadian public.</p>

Air Transportation (cont'd)

Recent Amendment of the Act	Description of Recent Amendment of the Act	Summary of Status
Subparagraph: 86(1)(h)iii: Compensation	Authorized the Agency to make regulatory changes to direct international carriers that are not licensees to pay out-of-pocket expenses when they have failed to apply their tariff.	The Agency has revised its regulations in line with these new requirements.
Section 86.1 Advertising air fares	Once in force, the Agency will be required to develop regulations to ensure airline advertising practices are sufficiently transparent, allowing consumers to identify the true cost of flights within or originating in Canada.	Provision has not come into force.

Volume related composite price index (VRCPI)

In addition to these changes in the Act, Clause 57 in Bill C-11 authorized the Agency, upon request of the Minister of Transport, Infrastructure and Communities, to adjust, once-only, the VRCPI to reflect costs incurred by CN and CPR for maintenance of hopper cars used for the movement of Western grain.

At the request of the Minister, in 2007-08 the Agency undertook the once-only adjustment which removed the historical hopper car maintenance costs that were “embedded” within the revenue caps and replaced them with costs actually incurred by the railway companies.

Following industry and government consultations, the final adjustment was announced by the Agency on February 19, 2008, setting the final index at 1.0639 for application to the entire 2007-2008 crop year. Given that the amount of Western grain traffic for 2007-2008 was 26.8 million tonnes, this new index resulted in a \$69.6 million reduction to the 2007-08 revenue caps, which translates to approximately \$2.60 per tonne. CN and CPR sought leave to appeal which was dismissed by the Federal Court of Appeal.

CN and CPR then sought leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada, which denied leave to appeal on April 23, 2009.

Ongoing monitoring of operation of the Act

While the legislative changes noted above have addressed many of the challenges the Agency has experienced in the operation of the Act over the years, the Agency continues to monitor all aspects of the operation of the Act to ensure the effective administration of its enabling legislation.

Authority to address systemic issues related to international conventions

The *Montreal Convention*, which came into force in 2003, has been incorporated into domestic law by the *Carriage by Air Act*. The Convention consolidates and modernizes the rules of the *Warsaw Convention*. It applies to all international carriage of persons, baggage or cargo.

For international return travel from Canada, the limits of liability are established by the *Montreal Convention*. An exception to the liability standard is in situations involving a one-way trip originating from, or destined to, a country that has not ratified the *Montreal Convention*, where the *Warsaw Convention* would still apply.

The Agency has found that a broad range of carriers conducting services from Canada have still not applied terms and conditions in their tariffs that respect the *Montreal Convention*. While the *Montreal Convention* applies irrespective of whether or not it is reflected in the tariff, this creates confusion for the consumer who would not likely be aware of his or her rights.

The legal framework governing the Agency's activities in respect of air transportation requires that tariffs be just and reasonable, and to be such, tariffs must comply with Canadian law.

In exercising its jurisdiction in this respect, the Agency can act on its own motion. However, as this has to be done on a carrier-per-carrier basis, addressing this systemic issue in an effective way is challenging given the large number of carriers.

The Agency can also upon complaint address this situation, but again any remedy in this respect would be limited to a given carrier. Implementation of remedies on a complaint by complaint basis against specific carriers can also lead to unfairness and competitive disadvantage.

Systemic issues of non-compliance with international conventions could be more effectively addressed by providing across-the-board remedies, which would provide for fair treatment and an “even playing field” amongst competitors.

More specifically, making a legislative amendment to the *Canada Transportation Act* to provide the Agency with the power to substitute or suspend terms and conditions of air carriage for all, or a group of, carriers would allow the Agency to order air carriers to implement tariffs consistent with international conventions signed by Canada.

Jurisdictional overlap with the *Canadian Human Rights Act*

The Canadian Transportation Agency, the Canadian Human Rights Commission (CHRC) and the Canadian Human Rights Tribunal (CHRT) have the power under their respective legislation to address complaints by persons with disabilities regarding the accessibility of the federal transportation system. The *Canada Transportation Act* explicitly sets out the mandate of the Agency to ensure that undue obstacles to the mobility of persons, including persons with disabilities, are removed from federally-regulated transportation services and facilities.

The Supreme Court of Canada (in the *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650) confirmed that Part V of the *Canada Transportation Act* is human rights legislation and that the principles of the *Canadian Human Rights Act* must be applied by the Agency when it identifies and remedies undue obstacles.

The Supreme Court also acknowledged that the Agency uniquely has the specialized expertise to balance the requirements of persons with disabilities with the practical realities – financial, structural and logistic – of the federal transportation system. In undertaking this balancing, the Agency examines the transportation service provider’s duty to accommodate persons with disabilities, consistent with the undue hardship test applied by the CHRT.

A provision in the *Canada Transportation Act* requires the Agency and the CHRC to coordinate their activities in order to avoid jurisdictional conflict, and a memorandum of understanding designed to achieve this was entered into between the Agency and the CHRC.

However, a recent CHRT decision in *Morten v. Air Canada* (Decision 2007 CHRT 48) dealt with the same parties and the identical issues, and arrived at a different decision from one previously made by the Agency. The CHRT *Morten* decision could have significant jurisdictional implications for future transportation-related accessibility complaint applications.

As a result, the Agency has requested a judicial review by the Federal Court on these jurisdictional issues. Finalization of an updated Memorandum of Understanding between the Agency and the CHRC has been put on hold pending the results of the requested judicial review.

This jurisdictional overlap can lead to the following problems:

1. Complainants face uncertainty as to which body should address their complaints, particularly given the different remedies available under the *Canada Transportation Act* and the *Canadian Human Rights Act*. Although the Agency has the mandate to remove undue obstacles from the federal transportation network, it does not have the power to award compensation for pain and suffering, unlike the CHRT.
2. Respondents (e.g., carriers, terminal operators) face the possibility that they will have to defend the same issues under two different legislative regimes.
3. To the extent that both the Agency and the CHRC/CHRT deal with the same complaint, there is uncertainty and added costs for the respondent and the Government of Canada.

The Agency will report further on this issue once the Federal Court has addressed the matters raised by the Agency in the judicial review.

Investigation of systemic accessible transportation matters

The Act allows the Agency to investigate accessible transportation matters which are brought before it on complaint. As such, the Agency's investigation is limited to the issues raised by the applicant against a particular carrier/terminal operator.

While individual issues are effectively resolved through the complaint adjudication process, the following problems arise with respect to systemic issues that are raised:

- Undue obstacles that arise as a result of industry-wide policies/practices are not addressed as the Agency may only address the issue raised against the service provider named in the complaint. As such, persons with disabilities may continue to encounter the same undue obstacles.
- Decisions placing requirements to remove undue obstacles to accessibility on only one or some service providers can create significant competitive cost and/or operational disadvantages.
- Individual parties to complaints often do not fully and effectively represent the interests of other affected parties. This cannot be effectively addressed unless other affected parties intervene.

However, their participation and the extent of involvement is at their discretion. As such, complaints that may have ramifications for an entire industry may not have the benefit of a broader investigation that brings forward all the issues and interests.

Recent examples of systemic issues brought forward on complaint include the one-person-one-fare policy and the provision of oxygen on board aircraft. The complaints were limited to Air Canada/Jazz and Westjet, and, in the case of the oxygen complaints, the applicants were unrepresented thereby impacting on the extent and quality of their evidence.

Making a legislative amendment to the *Canada Transportation Act* to give the Agency the power to investigate on its own motion (that is, without having received a complaint) would enable the Agency to more effectively review issues that have broad implications for stakeholders. It would also allow the Agency to stay an application that has ramifications for an entire industry while it investigates more fully.

To preserve the integrity of accessibility review, including undue hardship analysis, any orders issued by the Agency would be done on an individual service provider basis. This would only be done after ensuring interests are fully considered and weighed and after taking into consideration the operational and economic circumstances of each of the individual service providers.

Improving annual reporting to Parliament

Amendments are recommended to subsection 42(1) of the Act to provide for submission of the Agency's Report to the Governor in Council within four months of the end of its fiscal year rather than, as currently required, by the end of May.

With respect to revising the date for submission of the Agency's Report, this would provide the Agency with a more reasonable time frame to finalize March 31 year-end data, strengthen the linkages between the Report and the Agency's Departmental Performance Report (DPR) and Report on Plans and Priorities (RPP), and create greater efficiency for the Agency to meet all of its reporting requirements to Parliament within its resource allocation.



Appendix: List of statistical tables available on Agency Web site

I. Agency rulings

1. Total rulings by Members

II. Dispute resolution

1. Disputes resolved in 2008-09

III. Air travel complaints

1. Complaints received by the Agency
2. Complaints investigated about Canadian air carriers
3. Complaints investigated about foreign air carriers
4. Complaints investigated about U.S. and EU carriers
5. Categories of complaints – all carriers
6. Categories of complaints – major Canadian carriers

IV. Air licensing and Charters

1. Air carriers by nationality
2. Licences held by nationality
3. Air licensing activities
4. Charter permits issued
5. Charter flight notifications

V. Rail transportation

1. Railway infrastructure and construction

VI. Marine transportation

1. Coasting trade applications

VII. Enforcement

1. Enforcement activities

To access the full list of statistical tables, go to www.cta.gc.ca/eng/statistics.

For a complete listing of Agency decisions currently before the Federal Court of Appeal or the Supreme Court of Canada, go to www.cta.gc.ca/eng/courts.