



Canadian
Transportation
Agency

Office
des transports
du Canada

Canadian Transportation Agency

Annual Report 2013-2014

*Making transportation efficient
and accessible for all*

Canada 

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The Honourable Lisa Raitt, P.C., M.P.
Minister of Transport
Tower C – Place de Ville
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Minister,

In accordance with section 42 of the *Canada Transportation Act*, I have the pleasure of presenting to you the Annual Report of the Canadian Transportation Agency for the period 2013-2014, including the Agency's assessment of the operation of the Act and any issues observed in its administration.

Yours sincerely,

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

Geoff Hare
Chair and Chief Executive Officer

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Highlights

1. Lac-Mégantic: a swift and appropriate response

After the tragic derailment at Lac-Mégantic, Quebec on July 6, 2013, the Agency devised a timely and effective response, by reviewing the certificate of fitness of the railway company involved, and by consulting on potential improvements to insurance requirements for federally regulated railway companies.

[More on the Agency's actions after the Lac-Mégantic derailment](#)

2. Significant decisions for air passenger rights

Whether it's for business, to be with family over the holidays or to bask in the sun for a few days, air travel has become a normal part of life for Canadians. Over the past year, the Agency has issued [a series of decisions](#) to ensure the rights of air passengers are respected. These decisions clarify and strengthen passenger rights – and the responsibilities of air carriers – on issues such as denied boarding, scheduling changes and baggage liability.

[More on the decisions that strengthen air passenger rights](#)

3. Helping railway companies and shippers work together

On June 26, 2013, to encourage railway companies and shippers to work together, the Government of Canada enacted the *Fair Rail Freight Service Act*. This new legislative measure has brought on new responsibilities for the Agency to arbitrate rail level of service issues.

[More on the Agency's new responsibilities in arbitrating rail level of service](#)

72%

of clients satisfied with the quality of service received from the Agency, irrespective of the result of their interaction

458

decisions rendered by Agency Members on matters related to the federal transportation system

Our sights set on excellence: Message from the Chair and CEO

The Agency can look back proudly on 2013-2014 as a year of marked success.

This year, we concluded important projects that we committed to in our 2011-2014 Strategic Plan. These major achievements have highly positive and tangible results:

- improved client service;
- streamlined administrative processes; and
- engaged staff equipped with the tools they need for their work.

This report also contains highlights of what we accomplished over the past three years against our 2011-2014 Strategic Plan priorities.

Throughout the last three years, we have continued to deliver timely and high-value services to consumers and transportation service providers, as shown by [our performance against our service standards](#). And once again this year we exceeded our target level of 70% for overall client satisfaction – no small accomplishment in a challenging and fluid operating environment.

Keeping pace with major developments in the transportation industry

The tragic train derailment in Lac-Mégantic, Quebec shone a spotlight on rail transportation in Canada, and raised issues related to the adequacy of third party liability coverage carried by federally-regulated railways. In response to the tragedy, the Agency proactively launched consultations as part of the Agency's review of insurance liability requirements and its process for issuing operating certificates for railways.

With the passing of the *Fair Rail Freight Service Act* in June 2013, the Agency assumed new responsibilities in addressing requests from shippers for rail level of service arbitration.

This year was also marked by a significantly higher volume of air-related complaints – a 67% increase. The Agency issued a number of decisions in 2013-2014 that clarify and strengthen air passenger rights in regard to compensation for overbooking, denied boarding and delayed baggage. As more and more Canadians choose to travel by air, our focus continues to be on helping air passengers understand their rights and responsibilities and the obligations of air carriers to them.

Agency decisions effectively address specific complaints; however, the Agency has limited scope to deal with industry-wide, systemic issues. That is why, in our assessment of the *Canada Transportation Act* – found in the last section of this report – the Agency is once again proposing that amendments to the Act be considered to provide the Agency with mechanisms to address specific types of systemic issues within the federal transportation network, for example with respect to access by persons with disabilities.

A strategic focus on new and better ways of providing service

Paying close attention to the evolving needs of the transportation sector means striving to continually improve the way we do business and deliver services.

The Agency has worked hard to deliver ever more value for money, as it has and continues to absorb significant new responsibilities while operating within its existing resource allocation. By following the clear roadmap set out in our last Strategic Plan, and through prudent resource management, we have positioned the Agency so that it can remain agile in adapting to changes both within the federal government and in its external environment.

We have made significant progress in simplifying our business processes and improving our services, especially in helping consumers and industry stakeholders access and understand them. The Agency's General Rules of Procedure, which set out how we conduct proceedings for adjudicating complaints, have been comprehensively reviewed and improved. The new Rules will be rolled out in early 2014-2015, along with new, interactive resource tools that will help parties understand the process and what they need to do. This will be especially useful for consumers that are not represented by legal counsel.

We remain committed to improving the clarity of our regulatory framework, and have produced plain-language guidance material in user-friendly electronic formats on specific topics of interest to transportation service providers, such as criteria that help define what constitutes an air service, and guidance about implementing the *All-Inclusive Air Service Price Advertising Regulations*.

As we begin a new cycle with the launch of our 2014-2017 Strategic Plan, we turn our attention to fundamentally transforming the way we work. Notably, a major priority of our next three-year Strategic Plan is embracing e-business and taking our services online.

Implementing this shift in how we work would not be possible without the Agency's prevailing culture of excellence. Our people are the reason we continue to be a leading tribunal and economic regulator, and the many accomplishments highlighted throughout this report attest their professionalism and dedication in serving Canadians and supporting a competitive, efficient and growing transportation sector.

For all their contributions over the last three years to the Agency's performance and their dedication to high quality service, I would like to take this opportunity to personally thank them.

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

Geoff Hare
Chair and Chief Executive Officer

Who we are

The Agency is dedicated to being a respected and trusted tribunal and economic regulator, that promotes a competitive and accessible national transportation system to meet Canadians' needs.

[Our mandate, mission, vision and values](#)

Members

The [Agency's Members](#) are appointed by the Governor in Council. They are responsible for rendering decisions and orders related to formal complaints or applications, as well as addressing other issues affecting Canada's national transportation system.

As objective and impartial quasi-judicial decision-makers, the Members abide by a [Code of Conduct](#).

Employees

The Agency employs more than 230 people with a variety of backgrounds and skill sets. Our workforce is made up of economists, engineers, lawyers, financial analysts, human resource and communications specialists, mediators, as well as case management, licensing and enforcement officers, and other key support staff. Because the Agency is a relatively small entity within the public service, we work closely together – creating a tightly knit group that understands the far-reaching effects of its work.

What's more, there is a strong sense of unity as diverse talents are often assembled into multi-disciplinary teams to tackle complex transportation matters. This ability to work together contributes greatly to the Agency's effectiveness by establishing a collaborative and collegial atmosphere where each employee's contribution is sought and valued.

[More on the Agency as an employer of choice](#)

In 2013-2014, the Agency issued 1328 rulings, virtually all of which required the involvement of Members of the Agency.

These rulings included:

309 orders;
458 decisions;
485 permits;
25 final letter decisions; and
93 interim decisions.

[2013-2014 Agency statistics](#)

Strategic actions and measurable results: how we operate

The Agency is firmly committed to managing its activities efficiently by carefully planning how it maximizes limited resources to achieve the best results. We plan ahead, we monitor and measure our work, and we report on what's been done.

This pragmatic approach has allowed the Agency to keep pace with changes in the transportation sector, and to achieve the positive and consistent results described in this report.

Looking back on three successful years: delivering on the priorities of the 2011-2014 Strategic Plan

As 2013-2014 comes to a close, we are also wrapping up another successful three-year strategic plan. As such, we are afforded a rare opportunity to reflect on the results achieved across all parts of the Agency over the last three years.

We are proud to report that the Agency has achieved the goals which it had set for itself. In an environment of rapid change and fiscal restraint, the Agency has taken on new legislated responsibilities and has applied innovative ways of delivering on its priorities.

Ultimately, the work done over the last three years has resulted in better service to clients, clearer guidance on regulations for the industry, and more support for employees.

The following table summarizes the principal initiatives completed in support of each of the three priorities.

Priority 1: Client service

Agency commitment: The Agency's dispute resolution services are high quality and clients are well informed and served in a fair, responsive and timely manner.

To **improve case management** practices and procedures, we:



- streamlined processing of formal cases through triaging and delegation of administrative issues to staff
- established new policies to improve the efficiency of the management of formal cases by combining proceedings, using decision trees and templates
- increased facilitation and mediation of railway noise and vibration and air travel complaint cases

We have introduced **new client-oriented resources** to help explain the Agency dispute resolution services. These included:



- a comprehensive methodology for assessing railway noise
- expanded information resources on our website to support the resolution of air travel complaints
- resource tools to help parties in accessibility disputes

We have **expanded the use of alternative dispute resolution** and have actively promote these services, by:



- developing and consulting on arbitration rules and procedures
- introducing a new resource tool for the mediation of disputes
- developing qualification criteria for arbitrators through a consultation process, then expanding the arbitrator roster for final offer arbitration with qualified candidates based on the new criteria

In order to better understand our clients' needs, we have **engaged in proactive dialogue** by:



- creating an online discussion forum for the Agency Accessibility Advisory Committee members
- holding quarterly roundtables with the Agency's Technical Advisory Committee for Rail Noise and Vibration
- attending industry events, and engaging with the public in outreach events to provide information and receive feedback


We have continually **measured client satisfaction** and our performance to identify opportunities for improvement and respond to clients' needs. Notably, we:





- developed an action plan based on feedback from client survey results
- measured and analyzed stakeholder satisfaction with regulatory programs
- enhanced the Agency's Performance Measurement Framework for dispute resolution services


Priority 2: Regulatory regime renewal


Agency commitment: The Agency's regulatory and non-regulatory approaches and their administration are up-to-date, well understood and delivered effectively and efficiently.

- 
- We have systematically **reviewed and updated the Agency's regulations** by developing amendments to the:
- *Canadian Transportation Agency General Rules* (amendments being implemented in a phased approach)
 - *Personnel Training Regulations*
 - *Railway Interswitching Regulations*
 - *Air Transportation Regulations* (including new requirements for all-inclusive air pricing)

- 
- We have worked to **develop and update non-regulatory approaches** by producing clear tools and guidance material, such as:
- interpretation notes on various and complex regulatory issues, for example, the maximum revenue entitlement program for grain shipping, the Canadian ownership requirement for air licensing, and air carrier signage requirements
 - a methodology for cost adjustments to the maximum revenue entitlement for grain shipping
 - Agency guidelines on determining the net salvage value of railway lines, and the processing of extra-bilateral air authorities
 - industry educational outreach material on all-inclusive air price advertising
 - criteria on what constitutes an air service for which an Agency licence is required
 - a new code of practice for the accessibility of non-National Airports System terminals

- 
- In order to **streamline our regulatory administrative processes**, we:
- updated the railway cost of capital methodology
 - improved the usability of the Uniform Classification of Accounts
 - conducted a thorough analysis of internal business processes
 - procured a case management solution which will support future online services

- 
- To **enhance regulatory compliance** through voluntary and non-voluntary means, we:
- launched and promoted a Sample Tariff to help air carriers, small and large, provide passengers with clear contracts of carriage
 - ensured that terms and conditions of carriage of air carriers selling air services are available to consumers on their websites
 - ensured that air service providers complied with the rules on all-inclusive air price advertising
 - provided carriers with self-reporting tools on accessibility and assistance to improve their compliance

- 
- We measured and monitored **stakeholder satisfaction** and **program performance** by:
- obtaining stakeholder feedback through meetings and participation in industry events
 - monitoring our performance to ensure we met or exceeded our targets
 - analyzing results from our client satisfaction survey

Priority 3: People

Agency commitment: The Agency's employees are engaged, knowledgeable, respected and provide excellent client service.



To **recruit and retain** people with the skills and competencies required by the Agency, we:

- published employee orientation information on the intranet
- developed an inter-branch onboarding program for new employees
- developed and published a careers web section



We have worked to embed a **workplace culture that promotes service quality and innovation** by:

- actively seeking employee input for Blueprint 2020 and the 2014-2017 Strategic Plan
- implementing a new Agency awards and recognition program



We have ensured **ongoing communication and dialogue** throughout the Agency by:

- updating the Agency's Governance Framework to encourage further collaboration and dialogue and effective and timely decision-making
- offering workplace communications training to employees in supervisory roles
- promoting internal resources designed to clarify roles, responsibilities and channels of communication



In order to champion public service values and ethics and a **climate of trust, integrity and respect**, we:

- identified and implemented best practices in fostering a respectful workplace
- renewed the Agency's informal conflict resolution system
- developed an Agency Code of Values and Ethics
- implemented an employee engagement framework
- provided mandatory training in managing workplace conflicts



To ensure our people have the **knowledge and tools** to carry out their work, we:

- created employee competency profiles for the Agency
- updated the Agency's employee orientation program



We have provided our people with **professional development opportunities** by:

- introducing learning roadmaps to help employees plan their careers
- producing quarterly employee movement reports to provide a snapshot of staffing processes

Transforming the way we work: the Strategic Plan 2014-2017

In keeping with the principles of Blueprint 2020, the Government of Canada's plan for the renewal of the public service, the Agency has drafted its road map for the next three years in a very open, collaborative approach, gathering input from all levels of staff. The result is an ambitious array of concrete measures to ensure the Agency achieves excellence in all it does, with a particular focus on three areas:

- service excellence
- regulatory effectiveness
- high-performing organization

A key component of this new strategic plan is our commitment to providing Agency services online: we will implement a shared case management system that will allow us to more effectively manage information and to fully integrate online access with the processing of determinations and decisions.

The Agency's new Strategic Plan will be launched in early 2014-2015.

Measuring our performance

The Agency strives for high performance in everything it does. Key performance targets allow us to measure progress towards providing ever-improving, high quality service, as well as timely decisions and determinations. The tables below show the Agency's results against the performance indicators for 2013-2014. Following a careful evaluation of our business processes, improved performance standards will be introduced in early 2014-2015.

Dispute resolution

Services	Standard	Target	2012-2013 results	2013-2014 results
Air travel complaints facilitated	90 days	80%	93%	82%
Rail and accessibility disputes facilitated	30 days	80%	97%	100%
Disputes mediated	30 days when no extension is requested	100%	100%	100%
Complex disputes resolved	90 days after pleadings are closed	80%	45%	87%
All other disputes resolved (except coasting trade)	120 days	On average	76 days on average	111 days on average
Disputed coasting trade applications resolved	90 days	80%	100%	100%
Undisputed coasting trade applications processed	Prior to start date of vessel performing services	95%	96%	98%

Regulation

Services	Standard	Target	2012-2013 results	2013-2014 results
Air licences issued	14 days after receiving a complete application	90%	96%	93%
Charter permits and amendments issued after receipt of application	30 days	92%	97%	95%
International code-sharing and wet lease authorities issued	45 days	100%	100%	96%
Rail determinations issued (including certificates of fitness)	120 days	95%	100%	100%

Communications

Service	Standard	Target	2012-2013 results	2013-2014 results
1-888 telephone calls answered (8 am - 8 pm E.T., Monday to Friday)	18 seconds	85%	92%	88%
Information about our programs and services available on our website	24 hours per day / 7 days per week	95%	100%	100%
Time to publish formal decisions on our website	1 day	100%	99%	93%

Listening to our clients and stakeholders

Each year, the Agency conducts client satisfaction surveys to gauge its success as a client-centred organization. Clients surveyed include those who used the Agency's dispute resolution services or applied for new air licences, as well as carriers and terminals that underwent an inspection. Survey respondents were asked to rate their satisfaction with respect to several aspects of service from the Agency.

The 2013-2014 survey results show that, regardless of the nature of their interaction, 72% of clients are satisfied with the overall quality of service provided by the Agency. This is essentially stable as compared to the results of the previous year, showing that we are broadly succeeding in offering high quality service to our stakeholders and clients.

The results clearly demonstrate that our people make a difference. When respondents were asked why they had given the Agency an overall positive rating, their most frequent answer (51%) related to excellent service.

Further, over three quarters of survey respondents said they were very or somewhat satisfied with the knowledge and competence of Agency staff, their helpfulness and courteousness. And almost three quarters of respondents strongly or somewhat agree that staff responded to all their questions and that they were treated fairly – a significant achievement for a tribunal, given that the outcome of a respondent's case may not have been in their favour.

Consulting with Canadians

The Agency recognizes that a key to its effectiveness and success is the extent to which its initiatives – policies, regulations, guidelines and decisions – are grounded in current realities and are fair in balancing the interests of the transportation sector's many and diverse clients and stakeholders.

The formal consultation process is one of the key tools the Agency uses to gather the insights it needs to do its work. These consultations allow us to better understand the perspectives of a wide range of consumers, stakeholders and experts to help us develop more informed and effective dispute resolution and regulatory services, including the ongoing modernization and administration of our regulatory regime.

Formal consultations on the following subjects were completed or ongoing in 2013-2014:

- improving how to determine whether a federal railway company's [third party liability insurance coverage](#) is adequate or not;
- modifying the [Uniform Classification of Accounts](#) to respond to evolving accounting standards in the rail industry;
- establishing new [rules of procedure for rail level of service arbitrations](#) between railway companies and shippers;
- a new approach to [interline baggage rules](#) that is clear and reasonable; and
- ways of accommodating urgent air ambulance request for approvals following the elimination of the [after-hours service for air charter approvals](#).

Taking the dialogue online

The Agency is embracing innovative ways of reaching its audiences. Earlier this year, as a pilot project, we launched an online forum to facilitate communications with the Agency's Accessibility Advisory Committee. As an example, the forum was used to collect feedback on proposed updates to the [Code of Practice on Ferry Accessibility for Persons with Disabilities](#).

Modernizing the Agency's General Rules

One of the key tools the Agency uses in carrying out its mandate is the *Canadian Transportation Agency General Rules*, which set out the overall procedures, processes and general timelines applied by the Agency.

Clients and stakeholders have clearly indicated that they want more information about the Agency's adjudication processes. They also want these processes to be faster and simpler, as well as more predictable and transparent.

In response, over the past two years, the Agency has thoroughly reviewed its General Rules, [consulted on proposed updates](#), and adopted a phased approach to implementing the new Rules of Procedure.

As a first phase, the General Rules were amended in the summer of 2013 to provide for a one-Member quorum.

The second phase amendments will be implemented in the spring of 2014. To help clarify how the Rules have changed and how they apply, the Agency is developing an interactive annotated version of the Rules of Procedure, along with other innovative tools to be published on the Agency's website. This will be of most benefit to persons with no legal representation wishing to use the Agency's dispute resolution services.

Resolving disputes

In 2013-2014, as is the case each year, hundreds of transportation users, service providers and other interested parties turned to the Agency looking for ways to resolve their disputes about:

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

The Agency provides a number of dispute resolution services, ranging from facilitation to mediation, arbitration, final offer arbitration, and adjudication.

For an overview of the different ways in which the Agency resolves disputes, see [How disputes are decided](#).

The Agency resolved 621 disputes in 2013-2014. Of these,

545 were resolved through facilitation; and 23 were resolved through mediation.

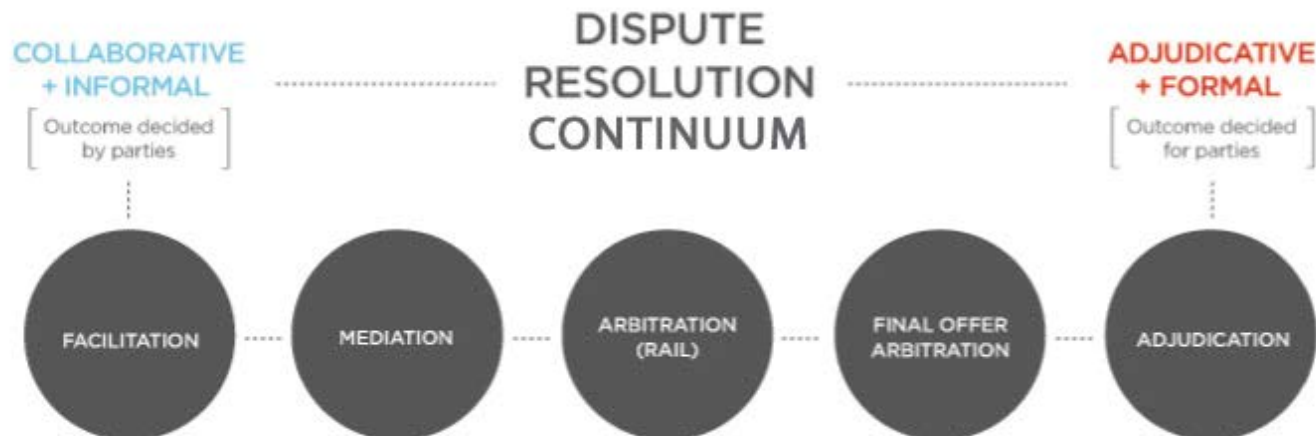
In addition, 172 cases were referred to formal adjudication during the year. Of these,

54 were resolved through decisions issued*; while

19 were withdrawn, dismissed or closed due to lack of response from the applicant.

**Proceedings in some cases combined to gain efficiencies*

[2013-2014 Agency statistics](#)



Striving for efficiency in dispute resolution

The Agency strives to adjudicate cases of moderate complexity within 120 days – a performance target we exceeded for the third year in a row.

For complex cases, the Agency adopted a performance target to have 80% of cases resolved within 90 days after the close of pleadings. The fact that we have achieved this ambitious target by resolving 87% of complex cases within the set timeline is a true illustration of the positive results yielded by the strategic plan and our diligent efforts in improving our internal processes and, in turn, client service.

Providing effective options to clients

In 2013-2014, over 90% of complaints brought forward by individual consumers were resolved informally, either through facilitation or mediation. The advantages of this approach are that acceptable solutions are found quickly, while both parties typically save considerable time and expense by resolving the issue without resorting to the Agency's formal adjudication process.

In the past year, 545 disputes were facilitated – of these, 20 were related to accessibility, 519 were related to air and 6 were related to rail. [How the Agency facilitates disputes](#)

The Agency met its target by completing 23 fully resolved mediation cases either within 30 days or with an extension requested by the parties. A highlight among these positive results is the successful mediation of two marine disputes. Had these cases not been mediated, they would have been subject to public hearings, a process involving more time and resources for the parties involved and the Agency alike. [How the Agency mediates disputes](#)

The Agency also administers final offer arbitration (FOA), referring submissions for FOA to an external arbitrator selected by the parties to a dispute. In 2013-2014, the Agency referred two cases for FOA. [More on final offer arbitration](#)

In 2013-2014, 57 mediation cases were processed:

23 cases were successfully resolved. Of these,

10 related to rail disputes;

7 related to air disputes

4 related to an accessibility disputes; and

2 related to marine disputes.

In addition,

1 case was partially resolved;

13 cases were withdrawn or unresolved; and

20 cases are currently in progress.

[2013-2014 Agency statistics](#)

New responsibilities in rail level of service arbitrations

On June 26, 2013, the *Fair Rail Freight Service Act* was enacted, amending the *Canada Transportation Act* to include measures that allow shippers to request from a railway company a service agreement. If a shipper and railway company cannot agree on the terms of the agreement, the shipper may apply to have the Agency establish terms for level of service through arbitration.

The Agency has taken steps to ensure it delivers effectively on its new responsibilities. To formalize the arbitration process, the Agency drafted [Rules of Procedure for Rail Level of Service Arbitration](#). Feedback on the proposed rules was sought from the industry through a public consultation, to ensure the needs of both shippers and railway companies are met. The Agency has finalized these Rules of Procedure, which will come into effect in 2014-2015.

No submissions for rail level of service arbitration were received in 2013-2014.

[More on rail level of service arbitration](#)

Resolving accessibility disputes

The Agency has a responsibility to ensure that any undue obstacles to the mobility of persons with disabilities are removed from federal air, rail, and extra-provincial ferry and bus transportation.

One of the ways that the Agency improves accessibility is by resolving individual complaints on a case-by-case basis.

Progress report on accessibility

In 2013-2014, the Agency exceeded its performance target for accessibility disputes, with all 20 disputes using facilitation resolved within the 30-day target. Of the four accessibility disputes resolved through mediation, three were resolved beyond the 30-day target at the request of the parties.

An additional eight cases were resolved through the Agency's formal adjudication process.

Decision: Name change on an attendant's air ticket

In Decision No. [167-AT-A-2013](#), among other accessibility issues, the Agency addressed the question of whether Air Transat's policy of not accepting any name changes on tickets constitutes an undue obstacle for a person with a disability when the requested name change relates to the ticket of an attendant.

The Agency found that, while a name change had ultimately been accepted four days prior to travel, the difficulties encountered by the applicant in having the name on the attendant's ticket changed had constituted an undue obstacle to the person's mobility. Consequently, the Agency ordered Air Transat to implement a formal policy permitting persons with disabilities who require the aid of an attendant during travel to request that the name on the ticket of the attendant be changed at no charge.

In 2013-2014, the Agency resolved 32 accessibility dispute cases. Of these,

20 were resolved through facilitation;
4 were resolved through mediation; and
8 were resolved through adjudication.

In addition,

9 were withdrawn or closed due to lack of response from applicants; and
10 were still in progress at year end.

[2013-2014 Agency statistics](#)

Published: Resource tool on travelling with an attendant

Travellers with a disability may wish to travel accompanied by an attendant to help them during their travels, while air carriers may require some of their passengers to be accompanied by an attendant for personal care or security reasons.

To inform travellers with disabilities of their rights, to help them plan their trip and to guide carriers in assessing whether the presence of an attendant should be required, the Agency has published a comprehensive resource tool, [Travelling with an Attendant in the Federal Transportation System](#).

Resolving air travel disputes

The Agency assesses air travel complaints against the air carrier's tariff – its fares, rates and charges, and terms and conditions of carriage – as well as Canadian transportation law and applicable international conventions. Where it appears that a carrier has not met its obligations, Agency staff will approach the carrier and informally attempt to obtain the carrier's voluntary agreement to do so. The vast majority of such complaints are resolved through facilitation in this manner.

While the Agency does not have jurisdiction over safety issues or complaints involving the quality of air carrier services, it is required by legislation to report on the number and nature of *all* air travel complaints received.

Progress report on air disputes

In 2013-2014, the Agency saw a 67% increase in the volume of air travel complaints received for facilitation – 882 compared to 529 in 2012-2013. This was due in part to increased awareness of the Agency's ability to assist passengers that encounter problems when travelling. A total of 744 cases were closed through the facilitation process. 519 cases were successfully facilitated, with 82% of these handled within the Agency's 90-day target. Another five cases were closed as they were about a carrier that had ceased operations and 43 cases were withdrawn by the applicant.

Far fewer cases are now dealt with through the Agency's formal process, with informal approaches, such as facilitation, proving to be an effective solution. Of the cases that first went to facilitation, only 101 could not be resolved and were referred, at the applicant's option, for mediation or referred to the Agency's adjudication process.

A total of 14 air travel complaint cases were referred from the facilitation process for mediation. Full settlement through mediation was obtained in three cases. The offer to mediate was declined by the air carrier in two instances. One air travel complaint case initially referred for mediation was subsequently referred to the Agency for adjudication. The remaining eight air travel complaint cases referred are still being mediated.

The Agency has a mandate to address a broad range of issues related to air travel, including:

- baggage
- flight disruptions
- tickets and reservations
- denied boarding due to overbooking
- refusal to transport
- passenger fares and charges
- cargo
- carrier-operated loyalty programs

87 cases for which a resolution could not be facilitated were transferred to the Agency's adjudication process. In the majority of these cases, applicants challenged the carrier's application of its terms and conditions of carriage. Two cases have been resolved through adjudication and the remaining 85 are currently in progress.

An additional 34 cases were submitted directly to the Agency for adjudication. Cases handled through adjudication are generally very complex, often involving overarching policy issues and the interpretation and application of international conventions in Canada.

Total air-related complaints

In 2013-2014, the Agency received a total of 1006 air-related complaints – 882 for facilitation and 121 for adjudication.

In addition, 8 air-related cases were resolved through mediation. It also began the year with a carry-over caseload of 151 complaints which had not been resolved in the previous year, bringing the Agency's total active caseload to 1154 air related complaints.

[2013-2014 Agency statistics](#)

Informal process – disputes addressed

744 air-related disputes were addressed through the Agency's informal resolution process.

Of these,

- 76 were determined to be outside the Agency's mandate;
- 5 was determined to be about a carrier that had ceased operations;
- 43 were withdrawn;
- 519 were settled through facilitation;
- 14 were referred for mediation; and
- 87 were referred to the Agency's adjudication process.

275 additional cases were still undergoing facilitation at year end.

[2013-2014 Agency statistics](#)

Informal process – disputes referred to carrier

In addition, 193 complaints submitted to Agency staff without first being brought up by the complainant with the carrier were referred for resolution between the complainant and the carrier.

Of these,

- 134 cases were resolved between the complainant and the carrier;
- 43 cases were not resolved between complainant and carrier; and
- 16 cases referred to the carriers by Agency staff were still being reviewed by the carrier at year end.

[2013-2014 Agency statistics](#)

Adjudication process – disputes resolved

23 air travel disputes were resolved through adjudication*. Of these,

8 related to allegations that a carrier had failed to respect its tariff; and,
15 related to allegations that the provisions of a carrier's tariff were unreasonable and/or unduly/unjustly discriminatory.

In addition,

8 were withdrawn or closed due to lack of response from the applicant; and
97 cases are currently in progress.

**Proceedings in some cases combined to gain efficiencies*

[2013-2014 Agency statistics](#)

Adjudication process – withdrawn, dismissed or ongoing

In addition,

10 air travel disputes were withdrawn or dismissed from the Agency's adjudication process; and
102 cases were still in adjudication at year end.

[2013-2014 Agency statistics](#)

Monitoring trends in facilitated air travel disputes

Categories of complaints

For the first year, flight disruptions was the most common issue raised in complaints received for facilitation. This is due largely to a correction to exclude duplicate citings in complaints of quality of service issues. Matters relating to flight disruptions were cited 568 times by complainants.

Although it is outside the Agency's mandate to resolve the quality of service issues raised in complaints, statistics are still gathered for historical purposes. The level or quality of the service provided by an air carrier has been cited 398 times in complaints in 2013-2014. Baggage-related matters (lost, damaged or delayed baggage) were cited 281 times in complaints.

Canadian air carriers

Complaints about Canadian air carriers accounted for 62.3% of all complaints in the facilitation process. The majority of these complaints were about Canada's major carriers, with smaller carriers accounting for 12% of all complaints. Specifically, during the reporting period, there were 546 complaints about 13 Canadian carriers, compared to 301 complaints in 2012-2013 and 215 complaints in 2011-2012.

The increase in the number of complaints submitted about Canadian air carriers could be due, in part, to a heightened awareness of the Agency's dispute resolution services stemming from the media coverage around decisions that clarified or strengthened the rights of passengers travelling with specific air carriers.

Overall, in 2013-2014, there were more complaints about major air carriers than in the previous year. Notably, the number of complaints about Air Canada increased by 175 – from 217 to 392. Jazz Airlines, a commercial partner of Air Canada, recorded the second highest volume of complaints, increasing almost three-fold from 16 to 42. The number of complaints about WestJet almost doubled from the previous year – with a total number of 25 in 2013-2014, as compared to 14 in 2012-2013. The number of complaints about Sunwing and Porter also increased, from 26 to 35 for Sunwing, and from 3 to 12 for Porter.

Foreign air carriers

There was an increase in the number of complaints about foreign carriers as well – from 218 in 2012-2013 to 330 in 2013-2014. This accounted for the remaining 37.7% of all complaints in the facilitation process in 2013-2014. 179 complaints in the facilitation process about foreign carriers were for non-U.S./non-EU carriers, compared to 94 for EU carriers and 57 for U.S. carriers.

Most notable were the increases in the number of complaints about Swiss International, Iberia and Jet Airways. A significant number of these complaints related to tickets purchased online, which the carrier subsequently cancelled after having identified they had been issued based on an erroneous fare. These are some of the 87 cases for which a resolution could not be facilitated and were transferred for adjudication.

The number of complaints about Swiss International increased significantly, from 51 in 2012-2013 to 74 in 2013-2014. The number of complaints about Iberia increased from 4 in 2012-2013 to 15 in 2013-2014, and the number of complaints about Jet Airways increased by 5, from 9 to 14.

Of note is the decrease in the number of complaints about Lufthansa – from 13 in 2012-2013 to 6 in 2013-2014.

Again this year, more non-U.S./ non-EU air carriers were subject to complaints – 36 carriers in 2013-2014, compared to 28 in 2012-2013. A total of 179 complaints in the facilitation process in 2013-2014 were about non-U.S./non-EU carriers compared to 116 complaints in 2012-2013.

Decisions: Air carrier tariffs should be clear

In two separate decisions, the Agency strongly emphasized the principle that passengers should be able to fully understand their rights and the remedies available to them simply by reading the carrier's tariff.

In Decision No. [227-C-A-2013](#), the Agency ruled that WestJet's international tariff contained several unclear and unreasonable provisions on denied boarding, and ordered WestJet to revise its existing rules for travel to and from Canada.

Decisions: Cancelled tickets due to erroneously quoted fare

The Agency received a large number of complaints from applicants who purchased tickets online for an international flight operated by Swiss International Air Lines Ltd. The air carrier subsequently advised the applicants that their tickets had been cancelled due to an error in the advertised fare.

For efficiency, the Agency combined proceedings of these cases so they could progress on the same timeline. The Agency also received similar complaints concerning other air carriers. Decisions are expected in 2014-2015.

Decisions: Reasonable compensation for denied boarding

One of the questions posed to the Agency this year was regarding what constitutes reasonable compensation when a passenger is denied boarding by a carrier.

In Decision No. [204-C-A-2013](#), after reviewing Air Canada's domestic tariff, the Agency ruled that a sum of \$100 cash (or a \$200 voucher) was unreasonable compensation for denied boarding on a domestic flight, and that the carrier would have to adopt new provisions for compensating travellers.

To determine if a compensation regime is reasonable, the Agency stated in a subsequent decision ([342-C-A-2013](#)) that it would consider the following factors:

- the degree to which the compensation regime mitigates the inconvenience suffered by passengers affected by denied boarding;
- the extent to which the denied boarding compensation regime is understandable; and,
- the ease of implementation of the regime.

The Agency concluded that a flexible compensation regime based on the length of the delay caused to the passenger should be adopted. This position was reinforced in a later decision ([442-C-A-2013](#)) with regard to Air Canada's international tariff.

As a result of these decisions, Air Canada's compensation rate for denied boarding now ranges from \$200 to \$800 and is based on the length of the delay.

Decisions: scheduling changes

In two separate decisions, the Agency strengthened air passengers' rights with regards to scheduling changes.

In Decision No. [344-C-A-2013](#) regarding Porter Airlines' tariff, the Agency concluded that it was unreasonable for the tariff to be silent on the matter of the liability assumed by the carrier when flight delays occur. As a result, Porter now provides better information on schedule changes and the reasons behind these changes to passengers.

The Agency also ruled, in Decision No. [327-C-A-2013](#), that certain provisions in Air Transat's international tariff were unreasonable. Remarking that passengers can be negatively impacted by flight advancements in the same way as they would be by flight delays, the Agency concluded that passengers should be afforded the same remedies in both cases.

Resolving rail disputes

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

When commercial negotiations break down, the Agency can be asked by one or both parties to assist, through facilitation or mediation, or to deal with a complaint through its adjudicative process.

An additional resolution mechanism is final offer arbitration (FOA), used to settle rate and service disputes between a shipper and a carrier. Final offer arbitration is administered by the Agency and conducted by an independent arbitrator from the Agency's roster, who will select either the final offer of the shipper or the carrier.

As of June 2013, the Agency is also responsible for arbitrating the establishment of terms of service between a shipper and a carrier in cases where both parties cannot reach a service agreement through commercial negotiations.

Progress report on rail transportation

Six rail disputes were facilitated in 2013-2014. These cases were all successfully resolved within the performance target of 30 days, surpassing our performance target of 80%.

Of the 33 rail cases closed by the Agency this year, 13 concerned noise and vibration caused by rail operations, three involved railway crossings, six were related to level of service and three were about interswitching.

The Agency investigates complaints and applications on the following topics:

- rail noise and vibration
- level of service
- railway crossings
- transfer and discontinuance of railway lines
- interswitching
- public passenger service providers' use of railway lines of other railway companies
- incidental charges, such as demurrage
- running rights and joint track usage

In 2013-2014, the Agency resolved 33 rail dispute cases. Of these,

- 6 were resolved through facilitation;
- 10 were resolved through mediation; and
- 17 were resolved through adjudication.

In addition,

14 disputes were withdrawn or closed due to lack of response from applicants; and
5 cases are currently in progress.

[2013-2014 Agency statistics](#)

Reporting on the environment

Over the course of the year, the Agency was involved in 10 environmental assessments, seven of which were related to proposed railway line construction projects and three were related to utility crossings.

As part of its review process for rail construction projects on federal lands, and in accordance with the *Canadian Environmental Assessment Act, 2012*, the Agency, together with other departments and agencies, carefully assesses whether a proposed project will likely have significant adverse environmental effects.

In keeping with the Agency's requirement to report on its activities on federal lands, for the fiscal year 2013-2014, the Agency did not receive any submissions for review of rail construction projects occurring on federal lands.

Decision: limitation of liability to a shipper

In a complaint from Canexus Chemicals Canada et al about the Canadian Pacific Railway Company's (CP) indemnification and liability terms and conditions in its dangerous goods tariff, the Agency was asked to examine the limitation of a carrier's liability to a shipper and the reasonableness of charges and associated terms and conditions.

The Agency found, in Decision No. [388-R-2013](#), that the prohibition against a carrier limiting its liability to a shipper is not restricted to loss and damage to goods. It also found that CP's tariff contains terms and conditions that limit CP's liability to a shipper.

Regarding the reasonableness of the terms included in the tariff, the Agency found that it lacked jurisdiction because the shipper's obligation in the tariff to indemnify, hold harmless, and defend CP is not a charge or a term and condition associated with a charge.

Leave to appeal this decision has been granted to the shippers and to CP by the Federal Court of Appeal. CP and the shippers appealed certain aspects of the Agency's findings related to the limitation of the railway company's liability to a shipper. The shippers also appealed the findings related to the Agency's lack of jurisdiction.

Decision: mitigation measures for rail noise

Following a complaint related to the noise and vibration caused by idling locomotives, switching operations and the resulting whistling near Lake Street in Huntingdon, Quebec, the Agency found CSX Transportation, Inc. (CSXT) had breached its obligation to only cause such noise as is reasonable.

After being granted an opportunity to propose mitigating measures, CSXT provided a detailed list of proposed changes to its operations that was accepted by the complainants as satisfactory mitigating measures.

The Agency's final decision ([194-R-2013](#)) ordered CSXT to implement the changes it proposed while reminding CSXT of its continued obligations to only cause such noise and vibration as is reasonable. Agency staff are monitoring compliance to ensure the order is fully implemented.

Agreements: Crossings

This past year, the Agency received 157 agreements filed by parties who had successfully conducted their own negotiations related to crossings. Once filed, these agreements become orders of the Agency. On 3 occasions when no agreement could be reached, the Agency was called upon by the parties involved to determine a fair resolution.

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.

Progress report on marine transportation

The Agency resolved 4 disputed coasting trade applications where a Canadian ship was offered. All of these were concluded within 90 days – exceeding the Agency's 80% target. These cases were moderately complex, and all resulted in the Agency ruling that a Canadian ship was suitable and available to perform the activity for which a foreign ship was proposed.

The Agency examines or arbitrates marine disputes related to:

- coasting trade applications
- tariffs proposed by pilotage authorities
- fees fixed by port authorities
- carriage by water of goods for northern resupply purposes
- price increases or reductions of service by a shipping conference

Regulating the industry

The Government of Canada's national transportation policy, as set out in the *Canada Transportation Act*, permits the market to largely self-regulate. However, it also acknowledges that regulation may be required to meet public objectives or in cases where parties are not served by effective competition.

Within the specific powers assigned to it by legislation, the Agency participates in the economic regulation of modes of transportation under federal jurisdiction by:

- licensing air and rail carriers;
- participating in the negotiation and implementation of international air agreements;
- approving the adequacy of the protection of advance payments made by charter companies contracting with air carriers;
- setting railway revenue caps for moving western grain;
- determining whether suitable Canadian ships are available to perform services in Canadian waters that a resident of Canada has requested be provided by a foreign ship;
- establishing financial and costing frameworks for certain railway companies;
- setting interswitching rates to increase competitive options available to shippers;
- administering regulations related to international air tariffs;
- determining whether terms and conditions of air travel are just and reasonable;
- establishing the net salvage value of railway lines to facilitate their orderly transfer; and
- administering regulations and codes of practice regarding accessibility.

The overarching objective in our regulatory activities is to ensure that the Agency's regulatory and non-regulatory approaches and their administration are up-to-date, well understood and delivered effectively and efficiently.

New responsibilities in regulating the carriage of grain

A record crop in western Canada, combined with an exceptionally cold winter, has put an important strain on Canada's shipping system for grain, and resulted this year in a considerable backlog in grain transportation.

To address this serious issue, on March 26, 2014 the Government introduced a new bill, the *Fair Rail for Grain Farmers Act*. As part of the proposed bill, should it be enacted, the Agency would be given new legislative responsibilities.

Striving for efficiency in regulation and administration of responsibilities

The Agency is sensitive to the need to minimize the regulatory burden on Canadian businesses, and is actively committed to creating a more predictable regulatory environment that promotes economic growth. Over the past year, and consistent with the Government of Canada's Red Tape Reduction Action Plan, the Agency has continued to ensure that it is:

- taking responsible steps to minimize the regulatory burden on Canadian businesses;
- providing clarity regarding the interpretation of regulations the Agency administers;
- sharing information on its forward regulatory plan and initiatives; and
- improving service and predictability.

The Agency is also committed to streamlining its business processes, and is currently working on a multi-year initiative to review each of its processes. As part of this initiative, and recognizing the need for strong partnerships within government to achieve efficiencies, the Agency participated in a government procurement process to acquire a common shared case management solution. As an early adopter, the Agency is now actively integrating its different processes within this new system, and is liaising with other departments to share common solutions and best practices.

In order to increase predictability, the Agency continually monitors its performance indicators for key services, such as regulatory authorizations, that specifically address the timeliness of decision-making and approvals. Results against these measures are published each year on our website. They allow us to track how closely our performance objectives are being met and to implement improvements to meet the accountability expectations of Parliament and Canadians.

Regulating the accessibility of transportation

In addition to resolving individual complaints, the Agency removes undue obstacles to the mobility of persons with disabilities on a systemic basis by regulating the accessibility of passenger transportation via air, rail and extra-provincial ferry and bus. It also regulates the training of service provider personnel to assist travellers with disabilities.

The Agency works to make the federal transportation network more accessible through regulations, the design and promotion of codes of practice and technical guidelines, as well as through proactive communications and outreach to all stakeholders.

Published: Compliance reports on voluntary codes of practice

The Agency undertook two separate monitoring exercises to assess industry compliance with its voluntary codes of practice. The first compliance report targeted [domestic air carriers](#) operating large aircraft, while the second focused on the passenger railway company [VIA Rail Canada Inc.](#)

Both reports demonstrated positive results for accessibility. Major carriers – that account for over 90% of the scheduled passenger traffic in Canada – were determined to be fully compliant. Passenger railway VIA Rail was also found to be fully compliant.

Regulating Canada's air carriers

When it comes to regulating air transportation, the Agency is responsible for:

- issuing licences, authorities and charter permits to Canadian and foreign air carriers offering services to the public;
- participating in the negotiation and implementation of international air transport agreements as part of the Government of Canada negotiating team; and
- regulating international air tariffs according to bilateral air transport agreements and Canada's *Air Transportation Regulations*.

The Agency also ensures compliance with Canadian legislation and regulations, including with respect to air fares, rates and charges, terms and conditions of carriage, and code sharing, wet leasing and charters.

Notice to industry: Criteria to determine what constitutes an air service

To improve the transparency and clarity of the legislative regime it administers, the Agency established a set of criteria that help define what constitutes an air service under the *Canada Transportation Act* and, in particular, what is meant by an air service being “publicly available”.

After considering submissions from stakeholders, the Agency identified [a set of four criteria](#) which it now applies in determining whether a person operates an air service.

Notice to industry: Canada's policy on leasing foreign aircraft with crew

On August 30, 2013, the Minister of Transport issued a [policy on wet-leasing](#) to limit the number of aircraft with crew that Canadian air carriers may lease from foreign parties.

According to the new policy, the number of foreign-owned aircraft that can be leased with crew for a period of more than 30 days is capped at 20% of the number of Canadian-registered aircraft on a lessee's Air Operator Certificate at the time of application.

To ensure industry is well informed and fully aware of this policy change, the Agency issued a [notice to industry](#) explaining how its approval process for wet leases would be guided by the principles of the new policy.

New approach to applying interline baggage rules

Across the international airline industry, carriers' approaches to applying baggage rules for itineraries involving multiple carriers have evolved due to new industry practices, including: à la carte pricing, regulatory change and carriers' objective to maximize revenue from baggage.

Canada did not have an all-encompassing approach for baggage rules for interline itineraries to determine which carrier's baggage rules should apply throughout a passenger's journey issued on a single ticket. Therefore, in 2013, the Agency held consultations with the public and industry to inform its decision on the best approach that would apply to travel arrangements involving multiple carriers to, from and within Canada, for checked and carry-on baggage.

Based on feedback received and a review of the approaches taken by the United States and the International Air Transportation Association, the Agency will issue its decision in early 2014-2015.

Applications: licensing

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

The Agency processed 790 air licensing applications over the course of 2013-2014, including applications for new licences, cancellations, suspensions, and reinstatements.

The Agency continues to maintain a licensing regime that ensures that publicly available air services:

- meet the applicable Canadian air ownership and control requirements;
- have the prescribed liability insurance;
- meet certain financial requirements when they start operations, if they are Canadian; and
- hold a Canadian aviation document issued by Transport Canada.

New scheduled international licences were issued for services between Canada and the following countries:

Canadian airline	Country
Air Transat	Haiti
Air Canada	Paraguay Bangladesh Israel
Sunwing Airlines	Sint Maarten Costa Rica Curaçao

Applications: Canadian ownership and control

The Agency reviewed the Canadian status of 25 licence applicants seeking a first authority from the Agency and 15 existing licensees seeking additional authority to operate domestic or international air services in 2013-2014.

During the year, the Agency introduced a streamlined and risk based approach for existing licensees seeking additional licence authorities. This new approach has contributed to a decrease in the administrative burden imposed on existing licensees and streamlined the Agency's internal review processes. After being satisfied that the companies were incorporated in Canada, that at least 75% of their voting interests were owned and controlled by Canadians, and that they were controlled in fact by Canadians, the Agency approved all 40 applications.

Reviews: Financial fitness

In 2013-2014, the Agency completed 1 review 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 that the applicants had a reasonable chance of success, which minimizes disruptions in service and protects consumers. The reviewed application was approved by the Agency.

Agreements: Bilateral air transportation

In 2013-2014, the Agency participated in 20 successful negotiations, resulting in new agreements or arrangements with Azerbaijan, Bangladesh, Burkina Faso, Burundi, Ecuador, Israel, Macedonia, Mongolia, Tanzania and Togo. In addition, consultations were held with 17 other countries.

Regulating Canada's rail carriers

The Agency sets the railway maximum revenue entitlement (cap) for the Canadian Pacific Railway Company (CP) and the Canadian National Railway Company (CN) 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.

In 2013-2014, the Agency made 8 rail determinations. Of these:

7 related to the issuance of certificates of fitness

1 was an authority for rail construction

[2013-2014 Agency statistics](#)

On July 6, 2013, a train carrying crude oil, operated by Montreal, Maine & Atlantic Railway, Ltd. (MMA) and its wholly-owned subsidiary Montreal, Maine & Atlantic Canada Co. (MMAC), derailed in Lac-Mégantic, Quebec; 47 people were killed in the ensuing explosion. This tragic event prompted immediate action.

An active response to the Lac-Mégantic derailment

The Agency acted swiftly and to the full extent of its authority as economic regulator: first, by verifying that MMA and MMAC continued to have adequate third party liability insurance coverage to continue operations after the derailment, and second, by reviewing whether current third party liability requirements were adequate for continuing operations.

Suspending MMA and MMAC's certificate of fitness

The Agency carefully reviewed the companies' insurance coverage, and was not satisfied that MMA and MMAC had adequately restored their third party liability insurance coverage after the derailment. As a result, Order No. [2013-R-266](#) was issued, suspending MMA's certificate of fitness.

The railway company subsequently filed for bankruptcy protection, and under a court-appointed monitor, it restored its third party liability insurance coverage. Understanding the key role played by the railway company in the region's economy, the Agency diligently reviewed the company's insurance coverage before [varying its order](#) by granting the railway company a short-term extension to continue operating.

The assets of MMA have since been purchased by an investment management company. The Agency has granted two more extensions for continued short-term operation of the railway after it received evidence that the operator had

adequate third party liability insurance coverage and had secured the necessary funds for the self-insured portion of the coverage.

Over those periods, the operator committed to not carrying any crude oil.

Reviewing third party liability insurance requirements

The Agency's second measure of response was broader and will have significant and long-lasting implications.

Recognizing that rail transportation, and with it the transportation of hazardous material, has been increasing across the country, in the fall of 2013 the Agency set out to determine, through a formal consultation, how best to ensure that railway companies have [adequate levels of third party liability coverage](#).

The review currently underway will examine possible improvements to the current regulatory framework, as prescribed in the *Railway Third Party Liability Insurance Coverage Regulations*, to meet these objectives. The Agency will complete its review in 2014-2015.

Determined: Railway revenues (crop year 2012-2013)

In December 2013, the Agency announced that the revenues of CN were under its maximum revenue entitlement, while CP had exceeded its revenue entitlement for crop year 2012-2013. CN's grain revenue of \$556,589,140 was \$6,346,256 below its revenue entitlement of \$562,935,396. CP's grain revenue of \$544,222,877 was \$177,961 above its revenue entitlement of \$544,044,916.

During the 2012-2013 crop year, just over 32.4 million tonnes of western grain were moved, which is 2.0% lower than the volume moved during the previous crop year. As well, the average length of haul of 944 miles was 8 miles, or 0.8 percent lower than the previous crop year.

[More on determinations of the Western Grain Revenue Caps for crop year 2012-2013](#)

Marine coasting trade industry

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

Progress report on coasting trade applications

In 2013-2014, the Agency received 97 coasting trade applications for which no offer of a Canadian vessel was made. In 10 of these cases, the offer was withdrawn.

Ensuring compliance

Enforcement

The Agency's enforcement officers ensure compliance among transportation service providers and air service price advertisers subject to the *Canada Transportation Act*, the *Air Transportation Regulations* and the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.

The Agency has generally found Canadian companies extremely cooperative and responsive in coming into compliance once notified by Agency designated enforcement officers of cases of non-compliance. Agency enforcement officers may, however, use their powers to levy administrative monetary penalties until compliance is achieved.

An important part of the Agency's enforcement work is to ensure compliance with the all-inclusive air price advertising requirements. Our education, outreach and enforcement efforts in this regard were very fruitful and are continuing. All Canadian carriers, all major online travel agencies and a large majority of foreign carriers that advertise air services in Canada were found by enforcement officers to be complying with the all-inclusive air price advertising requirements.

Published: Notice to Industry – Enforcement of the All-Inclusive Air Price Advertising Regulations

The all-inclusive air price advertising requirements have been in effect since December 2012, and the Agency's designated enforcement officers are responsible for verifying that the regulations are being followed as well as for issuing warnings and notices of violation for infractions.

To ensure the industry is well aware of how administrative monetary penalties will be issued for non-compliance with the regulations, the Agency released a [Notice to industry](#).

Advertisers of air prices may ask that a warning issued be reviewed, or that they be exempted from the regulations. The notice specifically explains that every day of non-compliance constitutes a contravention, even the days taken by the

In 2013-2014, Agency enforcement staff undertook 179 inspections, 102 advertiser verifications and completed 75 investigations.

Of these,

96 resulted in informal warnings;
113 resulted in formal warnings; and
21 notices of violation were issued.

[2013-2014 Agency statistics](#)

Agency to review a warning or a request for exemption. Advertisers should therefore make every effort to comply rapidly even if they have requested either a review or an exemption.

Assessment of the Act

The *Canada Transportation Act* is the Agency's enabling statute to implement prescribed economic elements of the federal government's transportation policies.

To ensure effective administration of its enabling legislation, the Agency monitors all aspects of the operation of this Act on an ongoing basis. The Act requires the Agency to assess the operation of, and any issues observed in, the administration of this Act and to report its findings to Parliament through its Annual Report.

Ongoing monitoring of the *Canada Transportation Act*

The following table provides the Agency's assessment of the operation of this Act based on activities of the Agency, including applications for resolution of disputes and for determinations before it and its findings on them. Specifically, it highlights the issues observed by the Agency in the administration of this Act and provides its views on possible approaches to address these issues for consideration of Parliament. Several of these issues have previously been included in the Agency's annual reports to Parliament.

The Agency's regulations, resolution of disputes, codes of practice and guidelines are the principal instruments by which the provisions of the Act are applied in the everyday context of the federal transportation sector. However, while regulations can support the functioning of efficient, fair markets, they can also prove unduly burdensome if poorly designed or implemented. In addition to its ongoing responsibility to monitor the Act and guided by the Government of Canada's Red Tape Reduction Action Plan and Cabinet Directive on Streamlining Regulation, the Agency also engages in ongoing assessments of its regulatory regime to ensure that it is streamlined and reflective of the evolution of government policy, the transportation industry and Agency practices. Several consultations have already been undertaken in this regard, which have been noted in this Annual Report.

Rail Transportation

1. Railway line transfers and discontinuances

Description

The Agency and the Federal Court of Appeal have rendered significant decisions concerning the determination of the net salvage value (NSV) of rail lines.

In a judgment of the Federal Court of Appeal regarding a Decision of the Agency (Decision No. 383-R-2007) under subsection 144(3.1) of the Act, the Court clarified jurisprudence on NSV determinations by ruling that Division V of the Act is a complete code and operates according to definite timelines that cannot be modified by the Agency.

Assessment

The Agency has no discretion to modify the timeline established for the completion of the discontinuance and abandonment process, and, in particular, within the 6-month period set out under subsection 144(4) of the Act. Accordingly, it is likely that the Agency will encounter difficulties completing the NSV of rail lines under this subsection within the timelines prescribed in the Act when there are difficult issues to be resolved, such as the assessment of environmental remediation costs or when winter weather conditions prevent the inspection of a railway line to assess track conditions. This may, in some cases, prevent the Agency from rendering the services it has been instructed by Parliament to provide to the parties involved.

Parliament may wish to consider whether there are exceptional circumstances under which the Agency should be allowed to extend the timelines set out in Division V of the Act to meet the intent of legislation and ensure the application of procedural fairness.

2. *Removing the obligation to set interswitching rates through regulations*

Description

Currently, under subsection 128(1) of the *Canada Transportation Act*, the Agency—through regulation—must either establish the interswitching rates or specify the manner of determining these rates. There is no explicit authority for the Agency to establish the actual rates outside of the regulatory-making process.

Assessment

The current approach means that, because of the long lead time between the cost-based rates being first calculated and the actual promulgation of these rates, the rates being established through the regulatory-making process can be significantly different from those that could be established with the most up-to-date information.

Furthermore, establishing rates through the regulatory-making process as opposed to an Agency determination is more complex and does not offer clear advantages, given that the matter is essentially of a technical costing nature.

By clearly allowing the Agency to set these rates outside of the regulatory-making process in an open manner, the Agency would be able to reflect more accurately and efficiently the costs of providing interswitching services.

3. Power to order parties to produce reports at their cost as well as to recover costs from parties for independent studies required

Description

Currently, the Agency has no authority to compel parties to produce expert reports and at their cost. In addition, the Agency has only limited authority to recover from parties costs incurred where the Agency retains independent experts to produce studies or reports.

Assessment

In various contexts, the Agency requires expert studies in order to provide information necessary for the Agency to make a fully informed determination or decision. Such studies may involve evaluations, noise and vibration assessments, environmental assessments or technical reports. For example, section 95.3 requires the Agency to adjudicate complaints related to the reasonableness of rail noise and vibration, and sections 144 to 146 of the Act require the Agency to provide a service to determine net salvage value, both of which can require the production of expert studies. However, there are no explicit legislative powers which give the Agency authority to order parties to produce expert studies, and at their expense.

Similarly, where the Agency itself is required to retain independent experts, the Agency has no authority to recover costs from parties except in limited circumstances (e.g., subsections 144(3.1) and 146.3(1) for net salvage value determinations). The costs associated can be substantial.

At times, parties have produced at their own expense expert studies required to fully inform the Agency's decision-making. However, they were under no obligation to do so and the Agency is still expected to make a determination with or without this information.

A modification to the Act could serve to clarify that the Agency can order a party or parties to produce necessary studies at their cost (and to determine the apportionment of costs between the parties where appropriate), or to reimburse costs incurred by the Agency to obtain the necessary studies.

4. Need for publicly-available information on service performance from railway companies

Description

The Agency is responsible for administering level of service provisions under the *Canada Transportation Act*, including disputes with respect to the common carrier obligations of rail carriers and the arbitration of rail level of service agreements where such agreements cannot be negotiated commercially.

At present, there are no general obligations on railway companies to report publicly on their performance in respect of the levels of service to the shippers actually achieved. This hampers the ability of shippers and the Agency to determine whether railway's current services are reasonable and consistent with common carrier obligations.

Assessment

A modification to the Act could require prescribed railway companies to publish level of service metrics (which would be defined if this proposal proceeds) to increase the transparency of railway performance.

Most rail carriers have sophisticated information systems that help them manage their business in an efficient and effective way, tracking performance of their equipment, delivery times, etc. Asking railway companies to make this existing information public would therefore not represent a significant burden.

Air Transportation

1. Authority to address and suspend unreasonable domestic tariff provisions

Description

Section 67.2 limits the Agency's authority to cases where a complaint has been received, which limits the Agency's ability to conduct investigations concerning the reasonableness of a carrier's terms and conditions of domestic carriage.

There are no similar complaint-driven constraints in respect of international tariffs.

This means that a decision requiring a carrier to change its international tariff because it has been determined to be unreasonable cannot be extended to the equivalent domestic tariff unless there has been a specific complaint about the domestic tariff. However, in response to a complaint, should the Agency find a domestic tariff provision unreasonable, it

can order changes to be made to a carrier's domestic tariff while also ensuring these are reflected in the carrier's international tariff.

Subsection 67.2(1) of the Act allows the Agency to suspend a domestic tariff against which a complaint has been filed, but only after the Agency has first determined that the tariff is unreasonable. This differs from the international regime where the Agency has the ability to suspend an international tariff pending the results of its investigation and decision on the matter.

Over the years, the Agency has received several complaints that relate concurrently to both domestic and international carriage, and has suspended the international condition at issue pending investigation, while the domestic condition remains in effect.

Assessment

The inability of the Agency to take action on its own motion regarding domestic tariffs can result in unequal treatment between domestic and international air travellers and increases the complexity of compliance for industry. It can also create confusion for passengers when dealing with the same air carrier, as different rules may apply for domestic and international legs of a flight.

A potential solution to avoid such confusion would be to allow the Agency to broaden its review to include the domestic tariff when investigating an international tariff provision, whether the investigation is of its own initiative or as a result of a consumer complaint. This would provide consistency in approach and eliminate situations where the Agency has found an international tariff to be unreasonable, but can take no action against the same domestic provision domestically with the same carrier.

Allowing the Agency to also suspend a potentially unreasonable domestic tariff provision pending its determination, in cases when it has taken similar action for the same international tariff provision, could also potentially eliminate an inconsistency that can confuse consumers.

2. Authority to address systemic issues related to international tariffs

Description

In exercising its jurisdiction as one of the Canadian aeronautical authorities to address the issue of non-compliance with Canadian law (e.g., the Montreal Convention), the Agency can act on its own motion as it deals with an international tariff. However, such matters must currently be addressed on a carrier-by-carrier basis.

To obtain consistency, based on existing legislation, Agency staff must launch processes with each and every carrier individually. The Agency regulates hundreds of carriers operating international air services and tariffs typically contain many pages of legal text addressing liability matters.

The same applies to accessibility matters.

Assessment

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, both domestically and internationally.

Allowing the Agency to address systemic issues of non-compliance with international conventions and Canadian law on a systemic basis would provide the Agency with additional leverage and methods to compel all non-compliant carriers to comply with Canadian law.

One approach to dealing with this issue may be to provide the Agency with the power to substitute or suspend terms and conditions of air carriage for all, or a group of, carriers and allow the Agency to issue an order applying to all air carriers to implement tariffs consistent with Canadian law and international conventions signed by Canada. Such an order, if disregarded by those carriers not in compliance with Canadian law, could be enforced by administrative monetary penalties. The same applies to issues related to accessibility in regards to enforcement of accessibility-related regulations.

It is the Agency's view that such an approach, while ensuring fairness among carriers, would also enable more efficient and effective enforcement of Canadian law.

3. Addressing systemic air transportation-related matters

Description

The Agency has the discretion to act on its own motion with respect to international air transportation tariffs on a carrier by carrier basis. However, the Act only allows the Agency to investigate domestic air-related matters on complaint. In all instances, the Agency's power to order remedies is limited to the carrier that is the subject of an international tariffs' own motion action or the respondent to a complaint.

While individual issues are effectively resolved through the complaint adjudication process, it is clear that in some cases, the issue goes beyond any particular carrier and may suggest a systemic problem. For example, in cases related to accessibility for persons with disabilities:

- Undue obstacles related to industry-wide policies or practices can only be resolved with the carrier named in the complaint. Persons with disabilities may continue to encounter the same undue obstacles with other service providers.
- 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 among providers.

Agency consultations held with air transportation providers have consistently highlighted concerns regarding individual remedies and a preference for levelling the playing field where systemic issues are concerned.

Examples of past systemic issues brought forward on complaint include the one-person-one-fare policy and the provision of oxygen on board aircraft, matters related to the carriage of passengers with allergies aboard aircraft and, more recently, a range of matters related to the treatment of passengers in case of schedule irregularities (e.g. unreasonable compensation for denied boarding).

A complaint may be filed against a carrier's policies which may have a broad public interest component, but due to the nature of the complaint, the Agency is limited as to what it can investigate.

Assessment

The current jurisdiction of the Agency limits its ability to expand the scope of an investigation when it would be appropriate to do so. As a result, the Agency is establishing through individual decisions—and on an ad hoc basis—what should otherwise be defined in a regulatory framework. This has several consequences:

Efficiency: As the same complaint can be lodged several times, against a different carrier every time, Agency resources are expended dealing with a matter that was previously resolved in relation to other carriers.

Consistency: Similar cases may end up producing different outcomes depending on the quality of the arguments presented to the Agency during its court-like process, which can generate inconsistencies in how the Agency responds to a given issue.

Fairness: As an Agency decision only applies to the carrier identified in the complaint, the carrier being required to comply is placed at a competitive disadvantage; this results in an uneven playing field among the industry.

Clarity: It is difficult for Canadians to know what their rights as air travellers are, when the tariffs of carriers differ on such matters as compensation for denied boarding.

To address the issue, Parliament may wish to consider a legislative amendment giving the Agency the discretion, under certain conditions and when it is determined to be appropriate, to properly and judiciously define the scope of a case in order to investigate issues raised in a complaint on a broader basis (be it industry-wide or limited to a sector of the industry). Any remedies or orders flowing from such an investigation would also be applied on an appropriate basis, industry-wide or focusing on a narrower sector.

Such an amendment could enable the Agency to more effectively review issues that have broad implications for stakeholders, while not necessarily placing individual transportation service providers at an unfair competitive disadvantage. It would also allow the Agency to stay an application that has ramifications for an entire sector while it completes a thorough investigation.

Having the flexibility to investigate known broader issues at the beginning of a process rather than having to wait for further complaints would allow for greater efficiency.

To preserve the integrity of the Agency's quasi-judicial adjudicative process, including undue hardship analysis in the case of accessibility disputes, any orders issued by the Agency would be applied 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.

Accessible Transportation

1. *Jurisdictional overlap with the Canadian Human Rights Act*

Description

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.

Sections 170 and 172 of the *Canada Transportation Act* explicitly set 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.

In 2007, the Supreme Court of Canada 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.

Section 171 of the 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. Despite this, the CHRT issued a Decision which dealt with the same complainant and identical issues while arriving at a different decision from one previously made by the Agency. In this case, the jurisdictional overlap resulted in a conflicting outcome.

At the request of the Agency, the Federal Court undertook a judicial review on these jurisdictional issues at the end of 2009-2010. In October 2010, the Federal Court overturned the CHRT's Decision, affirming the jurisdiction of the Agency as the principal expert tribunal in all transportation matters, including those related to accessibility.

The Federal Court ruling was appealed by the CHRT. In November 2011, the Federal Court of Appeal (FCA) confirmed the Federal Court ruling to set aside the CHRT's decision, stating that the CHRT could not reconsider a matter already

adjudicated by the Agency. However, the FCA did not address the question of whether the Agency has exclusive jurisdiction over disability-related cases involving the federal transportation network.

Assessment

This jurisdictional overlap can lead to the following problems:

- 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.
- Respondents (e.g., carriers, terminal operators) face the possibility that they will have to defend the same issues under two different legislative regimes.
- To the extent that both the Agency and the CHRC/CHRT deal with the same complaint, there is uncertainty, the possibility of conflicting outcomes from the two tribunals and added costs for the respondent and the Government of Canada.

In order to clarify the jurisdictional responsibilities of the Agency and the CHRC/CHRT, to provide for consistency and comparability with the CHRC/CHRT, and to avoid claims that the Agency is limited in its ability to provide a resolution that is satisfactory to all parties involved, the *Canada Transportation Act* could be amended to:

- confirm the Agency's exclusive mandate with respect to dealing with complaints by persons with disabilities regarding the accessibility of the federal transportation network;
- provide the Agency with the power to award costs for pain and suffering encountered, a power that the CHRT currently has; and
- provide the Agency with the jurisdiction to apply solutions on a wider, systemic basis, also a power that the CHRT currently has. Persons with disabilities would as a result be provided with the full range of remedies (see discussion immediately below) from one tribunal.

General

1. Clarification of the Agency's two main business functions

Description

The Canadian Transportation Agency is an independent body of the Government of Canada which currently performs two key functions within the federal transportation system.

- As a quasi-judicial tribunal, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.
- As an economic regulator, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction.

In its role as an economic regulator, some of the Agency's decisions – including many pertaining to charter permits or licensing activities – have effectively become routine and involve little or no real discretion. The delivery of such routine, non-discretionary regulatory services could be dealt with more effectively by staff.

However, there are no provisions for such a delegation of authority to staff in the *Canada Transportation Act*.

Currently, the Act:

- Provides limited guidance regarding the role of Members or the Chair/Chief Executive Officer (Chair/CEO);
- Requires Members to make all Agency decisions; and
- Makes no distinction between the adjudicative and regulatory provisions administered by the Agency.

Assessment

In the Agency's opinion, when the Act is next reviewed consideration should be given to clarifying:

- The authority of the Chair/CEO over the administration of economic regulations involving routine decisions and powers of delegation in that respect; and
- The two distinct functions of the Agency and the procedural expectations vis-à-vis each function.

These changes would:

- Allow Members to concentrate on their core role as adjudicators;
- Help distinguish between the administrative responsibilities carried out by the Agency and those borne by its Members as a tribunal; and
- Provide for the efficient, effective and timely administration of the routine and regulatory matters within the purview of the Agency.

2. 120-day deadline

Description

Subsection 29(1) of the Act states that the Agency will make its decision in any proceeding before it as expeditiously as possible, but no later than 120 days after the originating documents are received, unless the parties involved agree otherwise.

The Agency has set in place high performance standards. With a view to ensuring transparent, fair and efficient dispute resolution and administration of its regulatory responsibilities, in 2007, the Agency implemented a Performance Measurement Framework based on client and stakeholder feedback and expectations. The framework is reviewed regularly to adjust the benchmarks based on current business practices.

The framework's performance measures are tailored to the specific requirements of, and based on benchmarks for, different areas of its service delivery.

For example, in 2013-2014, the Agency exceeded its performance targets related to air licensing and charters by issuing 93% of all air licences within 14 days and 95% of all charter permits within 30 days. It has also consistently exceeded its performance target requiring that 80% of all marine coasting trade disputes be resolved within 90 days. In fact, even in complex cases, the Agency targets a resolution within 90 days from the close of pleadings, a target that was met for 87% of cases in 2013-2014.

In keeping with the principles of transparency and good governance, the Agency publicly displays its service standards on its website, and reports on them every year in its Annual Report.

As a result, the single 120-day deadline – which was set in 1996 for all proceedings before the Agency – has been replaced in practice by the detailed performance measurement framework the Agency has adopted, and has publicly reported on since 2009-2010.

As is clearly shown in the 2013-2014 Agency service standards report, below, most services are provided by the Agency well within the 120-day deadline.

Dispute resolution

Services	Standard	Target	2013-2014 results
Air travel complaints facilitated	90 days	80%	82%
Rail and accessibility disputes facilitated	30 days	80%	100%
Disputes mediated	30 days when no extension is requested	100%	100%
Complex disputes resolved	90 days after pleadings are closed	80%	87%
All other disputes resolved (except coasting trade)	120 days	On average	111 days on average
Disputed coasting trade applications resolved	90 days	80%	100%
Undisputed coasting trade applications processed	Prior to start date of vessel performing services	95%	98%

Regulation

Services	Standard	Target	2013-2014 results
Air licences issued	14 days after receiving a complete application	90%	93%
Charter permits and amendments issued after receipt of application	30 days	92%	95%
International code-sharing and wet lease authorities issued	45 days	100%	96%
Rail determinations issued (including certificates of fitness)	120 days	95%	100%

Communications

Service	Standard	Target	2013-2014 results
1-888 telephone calls answered (8 am - 8 pm E.T., Monday to Friday)	18 seconds	85%	88%
Information about our programs and services available on our website	24 hours per day / 7 days per week	95%	100%
Time to publish formal decisions on our website	1 day	100%	93%

Assessment

The Agency has adopted a series of service-specific, time-related performance measures which are more effective for overall Agency accountability than the single maximum 120-day legislated timeframe for all proceedings before the Agency. In all cases, these measures are based on time-related targets of less than 120 days.

The transportation industry has been informed of these targets and the Agency reports to Parliament and industry on its performance against them. In fact, client satisfaction survey results indicate that 72% of clients and stakeholders are satisfied with the overall service they receive from the Agency.

These performance measures and processes are based on client and stakeholder feedback and expectations, are relevant to the nature of each of the Agency's business activities, and have been designed to ensure that its services are provided in an efficient, transparent and client service-oriented manner. Performance results are published in the Agency's Annual Report to Parliament and on its Web site for clients and stakeholders.

Such results-focused performance indicators establish benchmarks and determine the standard of service the Agency needs to achieve to help maintain an efficient federal transportation system. They allow the Agency to track how closely its objectives are being met and to implement continuous improvements to enable it to meet the accountability expectations of Parliament and Canadians.

Subsection 29(1) of the Act already requires the Agency to act as expeditiously as possible and the Federal Court has previously ruled that the 120-day legislated timeframe is not mandatory. In addition, the Supreme Court of Canada (SCC) has recognized that 120 days is not an appropriate timeline for all cases, stating that:

Where a relatively limited adjudicative investigation is being conducted by the Agency, the Agency will gear its process towards rendering a decision within 120 days. On the other hand, where an adjudicative proceeding is broad in scope

and has far-reaching implications, the Agency will have to adjust its process to take account of these conditions. The 120-day period in s. 29 does not preclude it from doing so or cause the Agency to lose jurisdiction if the 120-day period is exceeded.

Accordingly, the Agency recommends that the Act be modified to:

- Remove this 120-day deadline and that, in its place, the Agency be required to establish service-specific, time-related performance measures, which would continue to be reported on annually in the Agency's Annual Report to Parliament; or, alternatively,
- Qualify exceptions to the 120-day period where more time may be required, as has been recognized by the SCC.

These proposed changes would contribute to better managing expectations by recognizing that in all instances the Agency aims to issue its decisions in less than 120 days, while acknowledging that this is not possible in certain circumstances.