



Canadian  
Transportation  
Agency

Office  
des transports  
du Canada

## Canadian Transportation Agency

### Annual Report 2014-2015

*Making transportation efficient  
and accessible for all*

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Canada 

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May 2015

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 2014-2015, 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. New responsibilities in regulating the carriage of grain

The *Fair Rail for Grain Farmers Act* was enacted in May 2014, giving the Agency new responsibilities to address a considerable backlog in grain transportation, as well as other rail transportation issues. The Agency acted quickly, holding consultations with key stakeholders. Their comments informed the Agency's advice to the Minister of Transport on minimum grain movements, as well as updates to interswitching regulations and new regulations to specify the operational terms that may be submitted for rail level of service arbitration.

### 2. New dispute adjudication rules and website increase access to justice

In June, the Agency launched two significant initiatives – a new website and new dispute adjudication rules – to provide more user-friendly, transparent and timely service to Canadians. The improvements in the Rules reflect feedback from client surveys and consultations indicating a need for faster service, streamlined processes and clearer, plain language information on how the Agency resolves disputes. An innovative, interactive [annotation to the Rules](#) gives people easy access to all the information and tools needed to participate effectively in dispute proceedings. The revamped website supports the new Rules with a completely reorganized structure and user-friendly web tools, informed by extensive usability testing. And, for the first time ever, users can file adjudication disputes and upload documents online. The new rules and web tools will help people who wish to use adjudication services but who are not familiar with legal processes, as well as clients and stakeholders who appear more regularly before the Agency.

### 3. Launch of our 2014-2017 Strategic Plan

The Agency's new [2014-2017 Strategic Plan](#) provides a roadmap to ensure we will continue to deliver streamlined, seamless interactions for clients and respond nimbly to shifting priorities. The Agency will focus on three strategic priorities: service excellence, regulatory effectiveness and high-performing organization. With this plan, the Agency will break new ground by adopting innovative technologies to support our work, transforming our business processes, improving our services and ensuring that our regulations are relevant and streamlined. The Agency also implemented a [strategic plan dashboard](#) to report on our progress in realizing the objectives of the plan.



66%

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



438

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

## A year of achievement and change: Message from the Chair and CEO

The past year at the Canadian Transportation Agency has seen new beginnings and objectives achieved, milestones reached and new faces introduced, and, above all, change.

We introduced an ambitious new three-year strategic plan, the foundation document that sets our priorities and guides activities going forward. This plan has an overarching goal: *Excellence*. We recognize that achieving excellence means we must transform the way we work.

The three priorities of our 2014-2017 strategic plan are:

- Service excellence
- Regulatory effectiveness
- High-performing organization

Our focus on these three priorities, and the actions we will take to deliver on them, will further solidify the Agency's reputation as a client-centric, responsive and modern organization.

The steps we have taken over the past year have moved us further down the road toward our destination – realizing the goals we have committed ourselves to achieving.

### Improving our service to Canadians

As in every other aspect of their everyday life, Canadian consumers and industry want to interact with their government online. Our clients expect the Agency to provide secure interactive online channels and tools to serve them in an effective, timely manner.

This year, the Agency redesigned the content and information architecture of its website. Simplified and written in plain language, the site is mobile-friendly and improves the usability, accessibility and searchability of Agency information. It also includes a new complaints wizard – an interactive tool that takes users through the process of filing a complaint with the Agency step-by-step.

In response to feedback we have received from our clients through our client satisfaction surveys and outreach, we have also improved how we adjudicate disputes by implementing new streamlined rules of procedure to make it easier,

especially for unrepresented parties, to present their cases and to receive more timely decisions. We have also made it easier for our clients by putting in place a suite of information tools and forms to file information electronically. And because transparency is one of our fundamental values, this year we started posting all applications for adjudication online, making it easier for interested parties to be aware of cases before the Agency.

Internally, the Agency has focused on reengineering key business processes, with the goal of providing improved client service. For example, air carrier licence application processes have been streamlined, making it simpler for carriers to apply.

We are moving ahead at full speed on the implementation of a new case management system, starting with our client-facing services. The new system will improve efficiencies across the Agency and features a web-based client interface that will also greatly enhance interactions between consumers, industry and the Agency.

### Taking on new mandates

Bill C-30, the *Fair Rail for Grain Farmers Act*, received royal assent in May 2014, amending the *Canada Transportation Act*. As required under the new provisions, the Agency provided advice to the Minister of Transport on the minimum amount of grain that should be shipped by rail, updated interswitching regulations, and developed regulations clarifying the operational terms in service level agreements that can be arbitrated.

After gaining new responsibilities in 2013, the Agency conducted rail level of service arbitrations for the first time this year. The Agency also established a new evaluation approach to clarify the process for adjudicating level of service complaints.

In air transportation, we concluded the development of new interline baggage rules. Reflecting a harmonized North American approach that will benefit both passengers and service providers, the new rules apply to tickets issued after April 1, 2015.

Our Annual Report provides information on many other accomplishments, including our once again strong results across the range of performance targets the Agency uses to ensure it continues to be productive, efficient and responsive. It also contains – as is required under the *Canada Transportation Act* – the Agency's assessment of the operation of the Act. We hope this assessment will also be of value to the independent review of the Act that is currently underway, being led by the Honourable David Emerson.

## Welcoming new Members

In June, the Agency welcomed the appointment of three new Members: William McMurray, Paul Fitzgerald and Stephen Campbell. Their combined expertise encompasses the air, rail and marine transportation sectors, as well as administrative law, transportation policy and board governance.

My term as the Chair and CEO ended in February. Completing this Annual Report was one of my last tasks as Chair. It is an impressive reminder of what has been accomplished.

My eight years with the Agency have been extremely rewarding. I am proud to have been given the opportunity to serve Canadians and to have been associated with the dedicated, professional people working here, and of what we have achieved together. With such a fine team in place, and a new strategic plan to chart the course forward, I have every confidence in the Agency's continuing success.

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.

### 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.

In 2014-2015, the Agency issued 1135 rulings, virtually all of which required the involvement of Members of the Agency.

These rulings included:

227 orders;  
438 decisions;  
355 permits;  
32 final letter decisions; and  
83 interim decisions.

[2014-2015 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.

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 are implementing 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.

Visit our [strategic plan dashboard](#) to see our progress in achieving our objectives.

### Increasing transparency: applications for adjudication posted online

Since June 2014, any applications that are accepted for adjudication are posted on the Agency's website. This new initiative allows anyone to see all the [current cases before the Agency](#). Interested parties can now easily find out what cases are before the Agency and consider whether they would like to file a position statement or a request to intervene. Additional information, such as the answer to the application, is available upon request.

### Going paperless and optimizing technology to enable employees

In 2014, the Agency implemented guiding principles for going paperless. We will be establishing paperless processes and minimizing printing wherever possible. As a knowledge-based organization, how we manage information and

communicate is critical to the way we deliver services. Going paperless supports us in becoming more agile, highly-responsive and modern.

To support this change, we're implementing new systems and tools to enable employees to perform at their highest level. For example, employees working in key groups were the first to replace their computers with dockable tablets. As well, employees can now access the Internet wirelessly from anywhere in the Agency's headquarters, making it easy to stay connected and look up information at any time.

### Transforming our service delivery

Throughout 2014-2015, the Agency worked diligently on an ambitious, multi-year initiative to implement a new shared case management system. This initiative supports our commitment to streamline business processes and enhance service delivery to our clients and stakeholders. The first results will be seen in early 2015, with an updated facilitation process for air travel complaints and a streamlined approach to filing agreements for rail crossings.

### 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, including timely decisions and determinations.

This year, the Agency updated its standards to reflect client and stakeholder feedback, as well as new strategic objectives for the 2014-2017 period.

The times shown in the tables below for dispute resolution and regulatory services begin from the date we determine that an application is complete. Please note that all of our service standards are now calculated in business days, unless specifically indicated.

These are the Agency's results against the performance indicators for 2014-2015.

### Overall performance

Services	Standard	Target	2014-2015 results
Overall client satisfaction	Client Satisfaction Survey	70	66%

## Dispute resolution

Services	Standard	Target	2014-2015 results
Air travel complaints facilitated	65 days	80%	65%
Rail and accessibility disputes facilitated	20 days	80%	85%
Disputes mediated	20 days or within extension requested by the parties	100%	100%
Complex disputes resolved	65 days after pleadings are closed	80%	67%
All other disputes resolved (except coasting trade)	85 days	On average	62 days on average
Disputed coasting trade applications resolved	65 days	80%	100%
Undisputed coasting trade applications processed	Prior to start date of vessel performing services	95%	99%
Rail level of service arbitrations	45 calendar days up to 65 calendar days	100%	100%
Adjudication of objections to level of service arbitrations	35 calendar days	100%	100%
Final offer arbitrations	60 calendar days	100%	100%

## Regulation

Services	Standard	Target	2014-2015 results
Air licences issued	7 days after receiving a complete application	85%	94%
Charter permits and amendments issued after receipt of complete application	4 days	85%	97%

International code-sharing and wet lease authorities issued	15 days	85%	82%
Rail determinations issued	85 days	95%	80%

### *Compliance*

Services	Standard	Target	2014-2015 results
Air carriers and facility operators comply with regulatory requirements (compliance determinations)	70 days (from inspection date)	85%	96%
Licensees/facility operators who have been found in contravention with regulatory requirements and are brought into compliance following a periodic inspection remain compliant	n/a	85%	n/a
Level of compliance with targeted accessibility provisions in regulations	n/a	85%	100%
Level of compliance with targeted accessibility provisions in voluntary codes of practice	n/a	75%	75%

### *Communications*

Services	Standard	Target	2014-2015 results
Client inquiries answered	5 days	85%	100% (via email) 93% (via telephone)
1-888 telephone calls answered (between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday to Friday)	18 seconds	85%	89%

Information about our programs and services available on our website	24 hours per day / 7 days per week	95%	99%
Time to publish formal decisions on our website	1 day	100%	94%

## 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 2014-2015 survey results show that, regardless of the nature of their interaction, 66% of clients are satisfied with the overall quality of service provided by the Agency. As in previous years, satisfaction is closely tied to whether or not the respondent's objectives were met. Amongst respondents whose objectives were fully or largely met, the Agency achieves an impressive client satisfaction rating of 97%.

There is also a correlation between the level of satisfaction and the type of process or service. For example, in the 2014-2015 surveys, adjudication participants accounted for 9% of total responses, versus 4% in 2013-2014. Although survey respondents were asked about their overall satisfaction regardless of the outcome, adjudication is an adversarial process that results in "winners" and "losers." Participants in more collaborative dispute resolution services, such as facilitation, tend to express greater satisfaction with the process.

The Agency will carefully analyze the survey results to identify and respond to the issues raised by clients. Over the past year, the Agency processed a significantly greater volume of complaints. This volume of work resulted in longer case processing times – and a corresponding decline in the level of satisfaction. Over 70% of all respondents to the survey were clients who filed air travel complaints and were offered facilitation to resolve their disputes with the airlines.

The 2014-2015 survey results also highlight the Agency's strengths. The responses clearly demonstrate that our people continue to make a difference. When respondents were asked why they had given the Agency an overall positive rating, their most frequent answer (56%) related to excellent service – a 5% increase over 2013-2014 results, and an 11% increase since 2012-2013.

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.

As part of its 2014-2017 Strategic Plan, the Agency has undertaken an in-depth review of its existing client satisfaction survey framework to ensure it provides clear, actionable insights into its interactions with clients and stakeholders. The new framework will be implemented starting in 2015-2016.

### Improving our communications and outreach

In 2014-2015, the Agency adopted a stakeholder engagement strategy. The strategy has already led to enhanced coordination between different branches of the Agency and will ensure that stakeholders are more engaged and better informed.

Over the past year, the Agency also enhanced aspects of its service delivery, resulting in a corresponding decline in the number of telephone and e-mail inquiries we receive from clients. The Agency received a total of 1,011 inquiries in 2014-2015 – a 19% decrease. For example, a complete overhaul of the Agency's website information architecture and the launch of a more user-friendly air travel complaints resolution wizard mean that it's easier for clients and stakeholders to find information or complete tasks without assistance.

### 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 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 2014-2015:

- providing advice to the Minister on the minimum amount of grain to be moved by CN and CP from Western Canada;
- developing regulations for new interswitching rates and "operational terms" for rail level of service arbitration; and
- reviewing aspects of third party liability insurance coverage for federal railway companies within the Agency's mandate to determine if current requirements are adequate.

The Agency also consulted with its Accessibility Advisory Committee – made up of representatives from the community of persons with disabilities, the transportation industry and other interested parties. We held a meeting in October and engaged through our innovative online forum to collect feedback on:

- updates to the Ferry Code of Practice;
- a new resource tool on travelling with animals that provide disability-related assistance; and
- accessibility requirements for automated self-service kiosks.

## Resolving disputes

In 2014-2015, 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 and adjudication.

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

The Agency resolved 923 disputes in 2014-2015. Of these,

745 were resolved through facilitation; and  
31 were resolved through mediation.

In addition, 230 cases were referred to adjudication during the year. Of these,

147 were adjudicated with several proceedings combined for efficiency. This resulted in a total of 43 decisions issued by the Agency; while  
44 were withdrawn, dismissed or closed due to lack of response from the applicant; and  
39 were in progress at year end.

[2014-2015 Agency statistics](#)

## Striving for efficiency in dispute resolution

The Agency strives to adjudicate cases of moderate complexity within 85 business days.

For complex cases, the Agency adopted a performance target to have 80% of cases resolved within 65 days after the close of pleadings. This year, the performance fell short of the target with 3 cases taking longer to resolve. This was a particularly challenging year marked by higher volumes of grain crops and a severe winter, resulting in constraints on the rail service and numerous complaints from the rail shippers. For the first time this year, the Agency outlined its evaluation approach to rail level of service disputes. This was a key achievement which affected the timelines for dispute resolution.

## Providing effective options to clients

In 2014-2015, 84% 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 [adjudication process](#).

In the past year, 745 disputes were facilitated – of these, 15 were related to accessibility, 706 were related to air and 24 were related to rail.

The Agency met its target by completing 31 fully resolved mediation cases either within 20 days or with an extension requested by the parties.

The Agency also administers [final offer arbitration](#), referring submissions to an external arbitrator selected by the parties to a dispute. In 2014-2015, the Agency referred 1 case for final offer arbitration.

For the first time, the Agency also received applications for [rail level of service arbitration](#). This process enables a shipper to apply to the Agency to establish terms for rail level of service through arbitration, if the shipper and railway company cannot agree. The process was established in 2013 when the *Fair Rail Freight Service Act* was enacted.

The Agency received 5 applications, of which 2 were arbitrated by an Agency-appointed arbitrator within 45 or 65 days. Of the 5 applications, 4 were objected to by the railway company. The Agency adjudicated these objections within 35 days.

In 2014-2015, 59 mediation cases were processed:

31 cases were successfully resolved. Of these,  
7 related to rail disputes;  
5 related to an accessibility disputes; and  
19 related to air disputes.

In addition,

28 cases were withdrawn, unresolved, declined by one party or not accepted for mediation; and  
21 cases are currently in progress.

[2014-2015 Agency statistics](#)

In 2014-2015, 5 rail level of service arbitration cases were processed:

2 cases were arbitrated, resulting in service level agreements;  
2 cases were settled, reaching a service level agreement prior to the arbitration hearing;  
1 case was dismissed by the Agency; and  
0 cases are currently in progress.

Of the total 5 applications,

4 applications were objected to by the railway company and were adjudicated by the Agency panels.

[2014-2015 Agency statistics](#)

## 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 2014-2015, the Agency exceeded its performance target for accessibility disputes with all 15 disputes using facilitation resolved within the 20-day target.

An additional 5 cases were resolved through the Agency's adjudication process. All four complex disputes were resolved within the 65-day target and the one non-complex dispute was resolved within the 85-day target.

In 2014-2015, the Agency resolved 25 accessibility dispute cases. Of these,

15 were resolved through facilitation;  
5 were resolved through mediation; and  
5 were resolved through adjudication.

In addition,

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

[2014-2015 Agency statistics](#)

### Decision: Undue obstacles to the mobility of a person with PTSD

In July, the Agency issued a Decision in a case filed by a passenger with post-traumatic stress disorder (PTSD) against Air Canada.

In its Decision, the Agency considered several issues, including:

- is the passenger a person with a disability for the purposes of Part V of the *Canada Transportation Act*; and
- did Air Canada's policy about seating accommodation for persons with disabilities, and how it is applied, constitute an undue obstacle?

The Agency determined that the passenger is a person with a disability and that Air Canada failed to apply its policy and assign a seat to meet the passenger's needs. The Agency ordered Air Canada to remind its personnel to assign a seat to meet a passenger's disability-related needs, when requested at least 48 hours before departure and to make a reasonable effort to accommodate seating requests made within 48 hours of departure.

## Decision: Notifying passengers who are deaf or hard of hearing about gate changes

In June, the Agency issued a Decision in a complaint filed by a passenger who is deaf against Air Canada regarding its procedures for notifying passengers who are deaf or hard of hearing of gate changes. The passenger argued that Air Canada created an undue obstacle by failing to personally advise her of a gate-change or provide notification through alternate means such as text messages or updates to its mobile app.

In its Decision, the Agency found that while the passenger did not receive their preferred accommodation, Air Canada provided notice through display screens near the original gate. The Agency is also of the opinion that it is imperative that persons with disabilities identify themselves and communicate their needs throughout their journey in order to receive the disability-related services that they require.

## 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.

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

## Progress report on air disputes

In 2014-2015, the volume of air travel complaints handled through facilitation was 1,107 compared to 1,019 in 2013-2014.

This was due in part to increased awareness of the Agency's ability to assist people that encounter problems when travelling.

A total of 875 cases were closed through the facilitation process; of these, 706 cases were successfully facilitated, versus 519 in 2013-2014. Overall, 65% of these complaints were handled within the Agency's 65-day target.

Fewer cases are dealt with through the Agency's adjudication process, with informal approaches, such as facilitation, proving to be an effective solution. Of the cases that first went to facilitation, only 40 could not be resolved and were referred, at the applicant's option, for mediation or adjudication.

A total of 24 air travel complaint cases were referred from facilitation to mediation. Full settlement through mediation was obtained in 7 cases. Five air travel complaint cases referred are still in mediation.

A further 16 cases were transferred for adjudication. In the majority of these cases, applicants challenged the carrier's terms and conditions of carriage. Five cases have been resolved through adjudication, 6 were withdrawn and the remaining 5 cases are currently in progress.

An additional 43 air travel complaint 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 facilitated and adjudicated**

In 2014-2015, the Agency received a total of 867 air travel complaints – 824 for informal facilitation and 43 for adjudication.

[2014-2015 Agency statistics](#)

#### **Complaints submitted to the Agency to facilitate**

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

Of these,

706 were settled through facilitation;  
24 were referred for mediation; and  
16 were referred to the Agency's adjudication process.

In addition:

57 were determined to be outside the Agency's mandate;  
72 were withdrawn; and  
232 cases are currently in progress.

[2014-2015 Agency statistics](#)

#### **Facilitation – complaints referred to the carrier**

In addition, 180 complaints submitted to the Agency without first being brought to the attention of the carrier were referred for resolution between the complainant and the carrier.

Of these,

124 cases were resolved between the complainant and the carrier;  
42 cases were not resolved between complainant and carrier; and  
14 cases referred to the carriers by Agency staff were still being reviewed by the carrier at year end.

[2014-2015 Agency statistics](#)

### **Adjudication – disputes resolved**

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

- 111 related to allegations that a carrier had failed to respect its tariff;
- 4 related to allegations that the provisions of a carrier's tariff were unreasonable and/or unduly/unjustly discriminatory; and
- 1 related to allegations of unreasonable domestic airline pricing.

In addition,

- 22 were withdrawn or closed due to lack of response from the applicant;
- 3 related to responses to show cause directions; and
- 9 cases are currently in progress.

*\*Proceedings in some cases combined to gain efficiencies*

[2014-2015 Agency statistics](#)

## **Monitoring trends in facilitated air travel disputes**

### ***Categories of complaints***

For 2014-2015, flight disruptions were the most common issue raised in complaints received for facilitation. Matters relating to flight disruptions were cited 635 times by complainants.

Baggage-related matters (lost, damaged or delayed baggage) were cited 308 times in complaints.

### ***Canadian air carriers***

Complaints about Canadian air carriers accounted for 68.2% 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 561 complaints about 13 Canadian carriers, compared to 546 complaints in 2013-2014 and 301 complaints in 2012-2013.

The increase in the number of complaints submitted about Canadian air carriers could be due, in part, to the public's awareness of the Agency's dispute resolution services stemming from the media coverage and Agency outreach efforts around significant Agency decisions.

The number of complaints about Air Canada decreased from 392 to 362. Jazz Airlines, a commercial partner of Air Canada, recorded the second highest volume of complaints, increasing from 42 to 66. The number of complaints about WestJet increased from 25 to 34 in 2014-2015. The number of complaints about Sunwing decreased from 35 to 29 and Porter increased, from 12 to 19.

### *Foreign air carriers*

There was a decrease in the number of complaints about foreign carriers – from 330 in 2013-2014 to 262 in 2014-2015. This accounted for the remaining 31.8% of all complaints in the facilitation process in 2014-2015. 102 complaints in the facilitation process about foreign carriers were for non-U.S./non-EU carriers, compared to 88 for EU carriers and 72 for U.S. carriers.

### *Decision: Erroneous air fares*

In July, the Agency issued a Decision in a case against Swiss International Air Lines Ltd. over the cancellation of tickets that had been erroneously issued. The case involved 83 individual complaints filed with the Agency.

The majority of complainants purchased multi-segment tickets for travel from Yangon, Myanmar to Canada – for approximately 1% of the correct base fare before taxes, fees and international surcharges.

After realizing the mistake, Swiss Air took immediate action to inform the affected passengers that it was cancelling the tickets and providing full refunds.

The complainants argued that Swiss Air should be ordered to provide transportation in the same class of service and at the same price as the tickets originally booked.

In its Decision, the Agency found that Swiss Air clearly did not intend for the tickets to be sold at that price. Because there was an error in a fundamental term of the contract of carriage – the price – the Agency found that there was no valid contract entered into between the parties and the complaints were dismissed.

## Decision: Air carrier policies on travelling with young children

Air carriers' policies related to travel with young children were challenged in a complaint against WestJet, Air Canada/Jazz, Air Transat, Sunwing and Porter Airlines. The applicant specifically objected to the requirement to pay an advance seat selection fee in order for a guardian to guarantee a seat next to their child.

In its Decision issued in December, the Agency found that the applicant had not demonstrated that the air carriers' supplemental seating policies and procedures are unreasonable or unduly/unjustly discriminatory.

However, the Agency also noted that terms and conditions of carriage of children must be included in air carriers' tariffs. The Agency ordered the respondents to file new tariff provisions that include supplemental seating policies and to make reasonable efforts to ensure that children are seated with their accompanying guardian.

## 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 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 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.

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

## Progress report on rail transportation

24 rail disputes were facilitated in 2014-2015. 75% of these cases were successfully resolved within the performance target of 20 days.

Of the 17 rail cases closed by the Agency this year, 1 was related to noise and vibration caused by rail operations, 2 were related to the transfer or discontinuance of a railway line, 4 involved railway or private crossings and 10 were related to level of service.

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 2014-2015, the Agency resolved 48 rail dispute cases. Of these,

24 were resolved through facilitation;  
7 were resolved through mediation; and  
17 were resolved through adjudication.

In addition,

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

[2014-2015 Agency statistics](#)

### Published: Evaluation approach for level of service disputes

Any person, which includes shippers, can file an application with the Agency if they believe that a federal railway company has not fulfilled its level of service obligations – an ongoing duty to furnish adequate and suitable accommodation and to transport traffic without delay.

A new three-step evaluation approach for adjudicating level of service complaints was developed by the Agency in 2014. The approach is based on interpretation of the *Canada Transportation Act* and a reasonableness test established by the courts.

The approach was established in the Agency's Decision issued in October with respect to Louis Dreyfus Commodities Canada Ltd. against Canadian National Railway.

While every complaint is examined on a case-by-case basis, the publication of the approach will help parties understand what evidence is required and how the Agency will assess their case.

### Published: Clarification on objections to rail level of service arbitration

In 2013, the *Fair Rail Freight Service Act* introduced arbitration for shippers and railway companies that are unable to negotiate level of service contracts. To formalize the arbitration process, the Agency drafted Rules of Procedure for Rail Level of Service Arbitration, which came into effect in April 2014.

Within the first 10 days of the arbitration process, the railway company can file an objection with the Agency declaring that the shipper is not entitled to submit one of the matters in its submission. While the Agency must appoint an arbitrator within two business days after receiving the parties' submissions, if an objection is received the Agency will adjudicate the objection in parallel with the arbitration.

To clarify matters for both parties, in September the Agency published an information document assisting parties in understanding how the Agency will decide matters that are not eligible for arbitration.

### Appealed: Decision on interswitching of traffic

In January, the Federal Court of Appeal dismissed Canadian Pacific's appeal of an Agency Decision issued in May 2013. The Agency had ordered CP to interchange traffic with BNSF Railway at rates set out in the *Railway Interswitching Regulations*.

A shipper can have its cars interswitched from one carrier to another at prescribed rates if the origin or destination of the traffic is within a certain distance of an interchange point. This provision helps to ensure that shippers with only one choice of railway company have fair and reasonable access to the railway system.

The court agreed that the conditions for interswitching were met.

### Reporting on the environment

Over the course of the year, the Agency was involved in 10 environmental assessments, 7 of which were related to proposed railway line construction projects and 3 were related to 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 2014-2015, the Agency did not receive any submissions for review of rail construction projects occurring on federal lands.

### Agreements: Crossings

This past year, the Agency received 3 agreements filed by parties who had successfully conducted their own negotiations related to crossings. 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 9 disputed coasting trade applications where a Canadian ship was offered. All of these were concluded within 65 days – well above the Agency's 80% target. These cases were moderately complex, and 4 resulted in the Agency ruling that a Canadian ship was suitable and available to perform the activity for which a foreign ship was proposed.

In addition, 3 disputed applications were withdrawn and 4 were denied, for a total of 16 disputed applications completed. One disputed application is currently in progress.

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 where competitive and market forces would not achieve the desired outcomes.

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 the Maximum Revenue Entitlement for railways that move Western Canadian 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.

## 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.

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.

## Ensuring 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: New standards on self-serve kiosks

Updates in December to the [Code of practice: Removing Communication Barriers for Travellers with Disabilities](#) include new standards for automated self-service kiosks. These kiosks are used to check in and print boarding passes.

Starting December 31, 2016, any newly installed kiosks at Canadian air, ferry and train terminals should be accessible to travellers with disabilities. The goal is to have 25% of kiosks in Canada accessible by December 31, 2022. In the meantime, an equivalent level of service is to be provided to people who are unable to use the inaccessible kiosks independently.

The standard is harmonized with the new United States Department of Transportation (DOT) rule published late last year. This will provide greater predictability and consistency across North America for travellers with disabilities.

### Published: Updated code of practice on ferry accessibility

Updated standards for ferry operators were published in December, ensuring better service for people with disabilities.

The updates to the [Ferry Accessibility for Persons with Disabilities: Code of Practice](#) include:

- Revised measurements for accessible washrooms, doorways and counters.
- A new requirement to provide “relieving areas” for service animals on vessels that travel for four consecutive hours or more.
- Information for ferry operators about training their employees to better assist persons with disabilities.

The Code applies to passenger ferries that weigh 1,000 or more gross tonnes and operate between provinces or territories, or between Canada and the United States.

### Published: Resource tool on travelling with assistance animals

Dogs are the most common type of animal providing disability-related assistance. But many other animals – including capuchin monkeys and cats – provide assistance to persons with disabilities.

In a new resource tool for air, rail and ferry travel, the Agency shares information to help both carriers and people with disabilities. Information for carriers focuses on accommodating passengers with different types of assistance animals. For persons with disabilities, there is information to help them plan their travel.

[Travelling with Animals that Provide Disability-Related Assistance](#) sets out factors for carriers to consider when determining under what conditions these assistance animals may be accepted for carriage.

## 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.

### 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 679 air licensing applications over the course of 2014-2015, including applications for new licences, cancellations, suspensions, and reinstatements.

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

- 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 Canada	Israel
	Tanzania
	Oman
	Panama
	Uruguay
	Bolivia
	Mali
	Burkina Faso
I.M.P. Group Limited	Mexico (Cancun and Puerto Vallarta)
WestJet	The European Community and its Member States

### **Applications: Canadian ownership and control**

The Agency reviewed the Canadian status of 22 licence applicants seeking a first licence authority from the Agency. The Agency also reviewed 14 existing licensees seeking additional authority to operate domestic or international air services in 2014-2015 where the applicant was required to confirm to the Agency that it continued to meet the Canadian requirement.

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 36 applications.

### **Reviews: Financial fitness**

In 2014-2015, the Agency completed 1 review of the financial fitness of a Canadian applicant seeking to offer domestic or international services using aircraft with more than 39 seats.

The purpose was to ensure that the applicant had a reasonable chance of success, which minimizes disruptions in service and protects consumers. The application was approved by the Agency.

### Agreements: Bilateral air transportation

In 2014-2015, the Agency participated in 6 successful negotiations, resulting in new agreements or arrangements with Ukraine, Philippines, Mali, Nigeria, Oman and Guyana. In addition, consultations regarding application and administration of existing agreements were held with 10 other countries.

### Published: Sample tariff updated to include privacy and accessibility provisions

The Agency's sample tariff helps air carriers develop and update their tariffs – providing comprehensive examples for carriers to draw upon. Our sample tariff for scheduled domestic and international flights is regularly updated to reflect current developments within the industry, legislative requirements and Agency decisions.

In February, the sample tariff was updated to incorporate findings of recent key Agency decisions, including:

- new provisions on privacy in accordance with the Personal Information Protection and Electronic Documents Act; and
- current best practices regarding passengers with a disability.

Carriers can adopt some or all of the sample rules when crafting or updating their own tariffs.

### New interline baggage rules for international flights

The Agency identified a need to establish a consistent approach to interline baggage rules that air carriers should apply, when participating in an interline itinerary for flights originating in or destined to Canada.

After holding industry and public consultations in 2013, the Agency's new approach to baggage rules was issued in April 2014. The new rules apply to itineraries involving multiple air carriers flying to and from Canada.

As set out in the new [Interline Baggage Rules for Canada](#), carriers are expected to:

- apply a single set of baggage rules to the entire itinerary; and
- disclose the applicable rules on the itinerary receipt or e-ticket.

The new rules aim to reduce passenger confusion and provide a harmonized and practical regime for industry.

The Agency's approach is consistent with baggage rules imposed in the United States. A harmonized North American approach avoids conflicting requirements and reduces unnecessary burden on the airline industry.

All carriers will be expected to comply with the new approach for tickets issued on or after April 1, 2015.

### Improved guidelines and forms for licence applications

Streamlined and simplified forms and guidelines now make the licence application process quicker, less burdensome and more intuitive for our clients.

This initiative was launched as part of the Agency's commitment to improve our service delivery. The original seven forms and accompanying guidelines were reduced to just two: one for Canadian carriers and one for foreign carriers.

As well, air carriers can now apply for multiple licence authorities with one form, regardless of whether they are applying for a domestic, scheduled or non-scheduled licence.

The new forms are responsive – generating required sections based on information the client enters – making the application process easier. Updated guidelines offer clear instructions on how to apply, helping to ensure that applications are complete.

### Updated: Canada's policy on leasing foreign aircraft with crew

In June 2014, the Minister of Transport issued a direction to the Agency on the interpretation of the Minister's 2013 Wet Lease Policy.

The policy limits the number of foreign-owned aircraft that can be leased with crew for a period of more than 30 days. It establishes a "cap" – the number of foreign-owned aircraft that can be leased by a Canadian air carrier can be no more than 20% of the number of Canadian-registered aircraft on its Air Operator Certificate.

In her direction, the Minister confirmed the 20% cap should be calculated at the time of the wet-lease application.

In September, the Agency issued an important Decision on wet-leasing where it had to consider a number of issues raised by interveners following the new policy direction. The Agency approved a wet lease arrangement between Sunwing Airlines Inc. and Travel Service.

After consulting with industry, the Agency released two new application guides and forms in March for air carriers' code share and wet lease applications. The new application guides and forms provide clear instructions on the regulatory requirements, helping applicants to file complete applications and making the regulatory regime more transparent. The new Wet Lease application guide also incorporates the requirements of the Minister's Wet Lease Policy.

## Regulating Canada's rail carriers

The Agency determines the railway Maximum Revenue Entitlement 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 2014-2015, the Agency made 6 rail determinations. Of these:

- 5 related to the issuance of certificates of fitness
- 1 was an authority for rail construction

[2014-2015 Agency statistics](#)

## Implementation of Bill C-30: the *Fair Rail for Grain Farmers Act*

In May 2014, Bill C-30, the *Fair Rail for Grain Farmers Act*, received royal assent, amending the *Canada Transportation Act*. The amendments respond to the challenges facing the grain handling and transportation system in western Canada and address other rail transportation issues.

The amendments gave the Agency new mandates and authorities. As a result, the Agency:

- advised the Minister of Transport on the minimum amount of grain that the CN and the CP should move during each month of the crop year (August 1- July 31);
- amended interswitching regulations to set rates for a new interchange distance of 160 km in the Prairies; and
- developed regulations to specify the operational terms that may be submitted for rail level of service arbitration.

The Agency undertook a series of targeted consultations to inform key stakeholders and seek their input.

## Advising the Minister of Transport on grain movement

As required by the *Fair Rail for Grain Farmers Act*, the Agency provided advice to the Minister of Transport by July 1 on the amount of grain that should be moved monthly during crop year 2014-2015. Our advice was informed by the consultations we held with stakeholders.

In the fall of 2014, the Minister asked the Agency to update its advice based on the grain that had been moved to date, and on the minimum volume requirements that had been set out in the Order-in-Council (OIC) dated July 31, 2014.

The Agency undertook additional consultations to obtain the information and input necessary for the update.

## Updated: *Railway Interswitching Regulations*

In August, the Agency amended the *Railway Interswitching Regulations* as part of the implementation of the *Fair Rail for Grain Farmers Act*.

The amendment increases the interchange distance for rail interswitching from 30 km to 160 km in Alberta, Saskatchewan and Manitoba for all commodities. This change is intended to increase competition among railway companies and improve shippers' access to markets.

## Published: *Regulations on Operational Terms for Rail Level of Service Arbitration*

In August, the Agency published the *Regulations on Operational Terms for Rail Level of Service Arbitration*. The regulations provide an extensive (but not exhaustive) list of examples of operational terms, including actions related to receiving, loading, unloading, delivery of traffic and others.

The list clarifies the matters eligible for rail level of service arbitration and will support the efficient and timely processing of arbitration cases.

## Published: Modernized guide to railway charges and crossing maintenance

Each year, the Agency publishes a [Guide to Railway Charges for Crossing Maintenance and Construction](#). The guide provides a third-party assessment of rail costs and sets consistent, nation-wide schedules and guidelines for work performed by railway companies.

Following the 2013 update of the guide, the Agency undertook an extensive review of the overhead rates applied to the construction, upgrade, and maintenance of crossing warning systems. This initiative was part of our commitment to modernizing guidance materials.

The review ensured that the overheads being included in the calculation of the rates continue to accurately reflect the costs associated with the crossing related activities.

The results of the review are reflected in the 2014 edition of the guide.

### **Determined: Railway revenues (crop year 2013-2014)**

In December 2014, the Agency announced that the revenues of CP were under its Maximum Revenue Entitlement, and that CN had exceeded its revenue entitlement for crop year 2013-2014.

CP's grain revenue of \$623,620,236 was \$1,653,714 below its entitlement of \$625,273,950. CN's grain revenue of \$672,110,852 was \$4,981,915 above its entitlement of \$667,128,937. CN was given 30 days to repay the amount by which it exceeded its 2013-2014 revenue entitlement, in addition to a five percent penalty of \$249,096, to the Western Grains Research Foundation, a farmer-financed and directed organization set up to fund research that benefits Prairie farmers.

During the 2013-2014 crop year, just over 38.4 million tonnes of western grain were moved, which is 18.8% higher than the volume moved during the previous crop year. As well, the average length of haul of 945 miles was just one mile, or 0.1% higher, than the previous crop year.

### **Published: Updated Uniform Classification of Accounts**

As an economic regulator, the Agency issues a number of railway-related cost determinations based on data supplied by railway companies. The *Uniform Classification of Accounts and Related Railway Records* (UCA) sets out accounting guidelines and instructions for reporting this information to the Agency.

After consulting extensively over two years, the Agency made a significant update to the UCA in 2015 in order to:

- modernize the accounting terminology;
- incorporate changes in methodology set out in Agency decisions;

- remove inconsistencies in definition and any ambiguities in meaning; and
- clarify the requirements for cost development purposes.

The updated guidelines, published in February, will also allow railway companies to provide required information in a cost-effective way.

### Decision: MMA and MMAC can no longer operate in Canada

Following the tragic derailment in Lac-Mégantic in 2013, Montreal, Maine & Atlantic Railway, Ltd. (MMA) and its wholly-owned subsidiary Montreal, Maine & Atlantic Canada Co. (MMAC) declared bankruptcy. In June 2014, their rail assets were sold to Central Maine & Quebec Railway (CMQ). The Agency issued a certificate of fitness (authorization to operate a railway) to CMQ, making it effective on the closing date of the sale.

In August, the Agency cancelled MMA and MMAC's certificate of fitness to operate in Canada.

### Updated: MOU ensures coordination with Transport Canada

As part of the Agency's ongoing coordination with Transport Canada on matters of mutual interest and responsibility, updates were made to a [Memorandum of Understanding](#) respecting:

- rail noise and vibration complaints;
- road, utility and private crossing applications;
- jurisdictional status of a railway; and
- railway operating certificates, certificates of fitness and railway line construction.

The MOU also reflects changes resulting from the *Railway Operating Certificate Regulations* that came into force on January 1, 2015. Under these regulations, new railway companies need to apply for a railway operating certificate from Transport Canada. Existing railway companies have up to two years to obtain their certificate.

The updated MOU coordinates the sharing of information on applications made for certificates of fitness from the Agency and railway operating certificates from Transport Canada, as both will be required to operate in Canada.

## 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 2014-2015, the Agency received 97 coasting trade applications for which no offer of a Canadian vessel was made. In 5 of these cases, the application 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* and the *Air Transportation 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.

To ensure a more accessible transportation network, the Agency also monitors whether service providers are compliant with its regulations and codes of practice. Enforcement officers regularly visit airports, and rail and marine terminals to ensure that employees have the training they need to serve persons with disabilities.

In 2014-2015, Agency enforcement staff undertook 175 inspections, 39 advertiser verifications resulting in enforcement actions and completed 82 investigations.

Of these,

21 resulted in informal warnings;  
78 resulted in formal warnings; and  
30 notices of violation were issued.

[2014-2015 Agency statistics](#)

## New measures to enforce level of service arbitration decisions

In 2013, the *Fair Rail Freight Service Act* introduced arbitration for shippers and railway companies that are unable to negotiate level of service contracts. Arbitration decisions are final and binding.

In March 2015, the Agency introduced a new series of administrative monetary penalties – “AMPs” – to enforce compliance with level of service arbitration decisions. To clarify how the penalties will be investigated and imposed, we also published a “questions and answers” document online.

Alleged violations of arbitration decisions will be investigated. If a contravention has taken place, the Agency has the authority to issue a notice of violation, imposing an administrative monetary penalty of up to \$100,000 per violation.

## 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.

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.

The Agency's assessment also includes 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.

## Rail Transportation

### *Railway line transfers and discontinuances*

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.

### *Removing the obligation to set interswitching rates through regulations*

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.

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

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 that 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.

### *Need for publicly-available information on service performance from railway companies*

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 terms where 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 companies' 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

### *Authority to address and suspend unreasonable domestic tariff provisions*

Section 67.2 limits the Agency's authority to cases where an application 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.

### *Authority to address systemic issues related to international tariffs*

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.

### *Addressing systemic air transportation-related matters*

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 that 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

### *Jurisdictional overlap with the Canadian Human Rights Act*

The Canadian Transportation Agency, the Canadian Human Rights Commission (CHRC) and the Canadian Human Rights Tribunal (CHRT) have the power under their respective legislation to address complaints by persons with disabilities regarding the accessibility of the federal transportation system.

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 from one tribunal.

## General

### *Clarification of the Agency's two main business functions*

The Canadian Transportation Agency is an independent body of the Government of Canada that 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 regulation 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.

### *120-day deadline*

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 calendar 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 that establishes service standards based in part on client and stakeholder feedback and expectations. The framework is reviewed annually to adjust the benchmarks based on current business practices and to ensure that performance targets are "stretch" targets.

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 2014-2015, the Agency exceeded its performance targets related to air licensing and charters by issuing 94% of all air licences within 7 days and 97% of all charter permits within 4 days. It has also consistently exceeded its performance target requiring that 80% of all marine coasting trade disputes be resolved within 65 days – the Agency resolved 100% within 65 days. In fact, even in complex cases, the Agency targets a resolution within 65 days from the close of pleadings, a target that was met for 67% of cases in 2014-2015.

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 been publicly reported on since 2009-2010.

As is clearly shown in the 2014-2015 Agency service standards report, below, most services are provided by the Agency well within the 120-day deadline.

## Overall performance

Services	Standard	Target	2014-2015 results
Overall client satisfaction	Client Satisfaction Survey	70%	66%

## Dispute resolution

Services	Standard	Target	2014-2015 results
Air travel complaints facilitated	65 days	80%	65%
Rail and accessibility disputes facilitated	20 days	80%	85%
Disputes mediated	20 days or within extension requested by the parties	100%	100%
Complex disputes resolved	65 days after pleadings are closed	80%	67%
All other disputes resolved (except coasting trade)	85 days	On average	62 days on average
Disputed coasting trade applications resolved	65 days	80%	100%
Undisputed coasting trade applications processed	Prior to start date of vessel performing services	95%	99%
Rail level of service arbitrations	45 calendar days up to 65 calendar days	100%	100%
Adjudication of objections to level of service arbitrations	35 calendar days	100%	100%
Final offer arbitrations	60 calendar days	100%	100%

## Regulation

Services	Standard	Target	2014-2015 results
Air licences issued	7 days after receiving a complete application	85%	94%
Charter permits and amendments issued after receipt of complete application	4 days	85%	97%
International code-sharing and wet lease authorities issued	15 days	85%	82%
Rail determinations issued	85 days	95%	80%

## Compliance

Services	Standard	Target	2014-2015 results
Air carriers and facility operators comply with regulatory requirements (compliance determinations)	70 days (from inspection date)	85%	96%
Licensees/facility operators who have been found in contravention with regulatory requirements and are brought into compliance following a periodic inspection remain compliant	n/a	85%	n/a
Level of compliance with targeted accessibility provisions in regulations	n/a	85%	100%
Level of compliance with targeted accessibility provisions in voluntary codes of practice	n/a	75%	75%

## Communications

Services	Standard	Target	2014-2015 results
Client inquiries answered	5 days	85%	100% (via email) 93% (via telephone)
1-888 telephone calls answered (between 8 a.m. and 8 p.m. Eastern Time, Monday to Friday)	18 seconds	85%	89%
Information about our programs and services available on our website	24 hours per day / 7 days per week	95%	99%
Time to publish formal decisions on our website	1 day	100%	94%

## Assessment

The Agency has adopted a series of service-specific, time-related performance measures that 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.

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, in its place, require the Agency 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.