



Canadian  
Transportation  
Agency

Office  
des transports  
du Canada

# CANADIAN TRANSPORTATION AGENCY

**ANNUAL REPORT 2015-2016**

Canada

This document and other Canadian Transportation Agency publications are available on our website at [cta.gc.ca](http://cta.gc.ca).

For more information about the Agency, please contact:

Canadian Transportation Agency

Ottawa, Ontario K1A 0N9

Telephone: 1-888-222-2592

TTY: 1-800-669-5575

Facsimile: 819-997-6727

Email: [info@otc-cta.gc.ca](mailto:info@otc-cta.gc.ca)

Website: [cta.gc.ca](http://cta.gc.ca)

© Her Majesty the Queen in Right of Canada, as represented by  
the Canadian Transportation Agency, 2016

Catalogue No. TT1E-PDF

ISSN 1494-7927

Available in multiple formats

June 2016

The Honourable Marc Garneau, 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 2015-2016, including the Agency's assessment of the operation of the Act and any issues observed in its administration.

Yours sincerely,

**Scott Streiner**  
*Chair and Chief Executive Officer*



# TABLE OF CONTENTS

Message from the Chair and CEO	1
About the Agency	3
Ensuring that the national transportation system runs smoothly and efficiently	4
Protecting the human right of persons with disabilities to an accessible transportation network	10
Providing consumer protection for air passengers	14
Statistics	18
Assessment of the Act	18

# MESSAGE FROM THE CHAIR AND CEO

It was an honour to be appointed last year as Chair and CEO of the Canadian Transportation Agency, following in the footsteps of 31 Chairs and Commissioners who led the Agency before me.

Established in 1904 as the Board of Railway Commissioners, the Agency is Canada's longest-standing independent, expert tribunal and regulator. Today, the



Agency's core mandate to help keep the national transportation system running smoothly and efficiently is more relevant than ever. It is difficult to over-state the economic and social benefits of a well-functioning transportation system in a country as vast as Canada – whose population, agricultural production, natural resources, and manufacturing are spread across enormous distances – particularly in an era of globalized trade and travel.

In recent decades, that mandate has been supplemented with two others. The first is to protect the fundamental right of Canadians with disabilities to an accessible transportation system. As stated in the United Nations' *Convention on the Rights of Persons with Disabilities*, accessible transportation is critical to the ability of persons with disabilities “to live independently and participate fully in all aspects of life.” The second is to provide consumer protection for air travellers, which is, by far, the source of the largest volume of complaints to the Agency.

To discharge these three core mandates, the Agency delivers a wide range of activities and services, many of which are outlined in the pages that follow. And to ensure that these activities and services remain relevant, efficient, and effective, the Agency must be responsive to the evolution of business models; travellers', shippers', and communities' expectations; and best practices in the adjudicative and regulatory fields.

A key step in this regard was taken in 2015-2016: a plan was developed, drawing on input from staff and external experts, to regroup the Agency's functions in ways that

would reinforce capacity in key areas, improve internal synergies and agility, and focus resources on delivery. The new structure was implemented on April 1, 2016, and we have now turned our attention to fostering collaboration across organizational boundaries and innovative thinking about how the Agency does its jobs.

The past year also saw preparatory work for the Agency's Regulatory Modernization Initiative. This project will involve a review of all regulations administered by the Agency and extensive consultations with stakeholders and other interested Canadians. Its goals are to ensure that industry's obligations are clear and up-to-date, no heavier than necessary to achieve the public policy purposes in which they are anchored, and written in a way that facilitates the identification and correction of instances of non-compliance.

Finally, in 2015-2016, the report of the arms-length review of the *Canada Transportation Act* was submitted to the Minister of Transport and tabled in Parliament. The Agency is ready to provide the Minister and Parliamentarians with whatever information and analysis would be helpful as they consider the report's recommendations and craft a vision for the future of transportation in Canada. The "Assessment of the Act" section of this report notes several areas where the Agency, based on its experience administering the legislation, believes amendments should be considered.

Let me conclude this message in a more personal vein by noting that in early 2016, the terms of the Agency's two temporary Members, Tom Maville and Raymon Kaduck, concluded. Tom and Ray each had a long, productive association with the Agency in a number of capacities, and I am grateful to them for their service to the organization and their valuable counsel to me as I settled into the position of Chair and CEO. More generally, I have reason to be impressed every day by the expertise and professionalism of my fellow Members and the public servants who staff the organization. The strength of the Agency is its people: a dedicated team working together to fulfil the roles given to the organization by Parliament, a team inspired by the Agency's deep roots and excited by its potential to make a difference for Canadians in the years and decades to come. It is a privilege to serve with them.

**Scott Streiner**

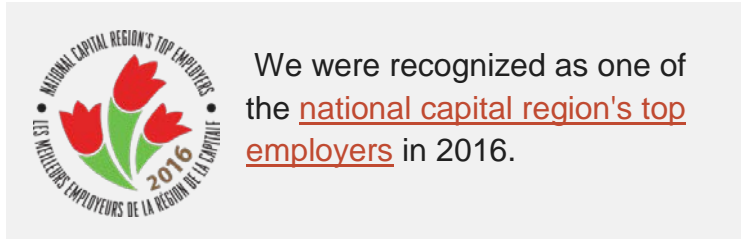
*Chair and Chief Executive Officer*

# ABOUT THE AGENCY

The Agency is an independent, quasi-judicial tribunal and regulator with the powers of a superior court.

We operate within the context of the very large and complex [Canadian transportation system](#).

The Agency exercises its powers through its [Members](#), who are appointed by the Governor-in-Council (GIC).



## WHAT WE DO: OUR THREE MANDATES

- We help ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians: those who work and invest in it; the producers, shippers, travellers and businesses who rely on it; and the communities where it operates.
- We protect the human right of persons with disabilities to an accessible transportation network.
- We provide consumer protection for air passengers.

## HOW WE DO IT: OUR TOOLS

To help advance these mandates, we have three tools at our disposal:

- **Rule-making:** We develop and apply ground rules that establish the rights and responsibilities of transportation service providers and users and that level the playing field among competitors. These rules can take the form of binding regulations or less formal guidelines, codes of practice or interpretation notes.
- **Dispute resolution:** We resolve disputes that arise between transportation providers on the one hand, and their clients and neighbours on the other, using a range of tools from facilitation and mediation to arbitration and adjudication.
- **Information provision:** We provide information on the transportation system, the rights and responsibilities of transportation providers and users, and the Agency's legislation and services.

# ENSURING THAT THE NATIONAL TRANSPORTATION SYSTEM RUNS SMOOTHLY AND EFFICIENTLY

The Agency's oldest mandate, and the one with the greatest economic impact, is to keep the national transportation system running efficiently and smoothly in the interests of all Canadians – those who work and invest in it, the producers, shippers, travellers and businesses who rely on it, and the communities where it operates – and the prosperity and social fabric of the country as a whole.

Broadly speaking, to implement this mandate, we:

- oversee market entry and exit by making and administering regulations to ensure that industry parties compete on an equal footing, and that the interests of Canadians are protected;
- help resolve disputes by using a range of approaches from relatively informal facilitation and mediation to more formal arbitration and adjudication.

For example, the Agency:

- administers an air licensing and charter permit system;
- issues certificates of fitness for federal railway companies and enforces compliance with minimum insurance requirements;
- determines whether suitable Canadian vessels are available when applications are made to use foreign vessels;
- determines railway costs, approves rail line construction, oversees the discontinuance of service, establishes the net salvage value of railway lines;
- determines interswitching rates and the maximum revenue entitlement for the movement of Western grain;
- resolves disputes between railway companies and shippers over rates or level of service, and between individuals or communities affected by rail noise and vibration.



# HIGHLIGHTS FROM 2015-2016

## Clarification on who must hold an air licence

As part of its responsibility for licensing publicly-available air services, the Agency made an important determination in March on whether resellers – companies that purchase seats from an air carrier and resell them to the public – should be required to hold an air licence.

In March, the Agency determined that resellers will not be required to hold an air licence, as long as it is clear to the public that they are a reseller.

The determination brings clarity and predictability to a rapidly evolving airline industry, allows for innovation and consumer choice and maintains protection for travellers. Air travellers will continue to be covered by the terms and conditions of carriage set out in the actual air carrier's tariff.

The Agency also determined that NewLeaf Travel Company Inc. would be considered a reseller under its proposed business approach.

This determination reflects the most reasonable interpretation of the statutory requirements related to domestic air licences, and was made after careful consideration of submissions received through a public consultation process held in December and January.

## Air licensing activities

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.

In 2015-2016, new scheduled international licences were issued for services between Canada and the following countries:

Country	Canadian airline
Curaçao	Air Transat
Nigeria, Taipei, Israel	Air Canada
Mexico	CanJet
Member States of the European Community, United States of America	KF Cargo

In 2015-2016, the Agency reviewed 38 licence applications where it was required to verify applicable Canadian ownership and control requirements. The Agency approved all 38 applications, including 18 from 13 first-time applicants.

The Agency received 2 applications from Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats. In order to minimize disruptions in service and protect consumers, the Agency is reviewing the financial fitness of the applicants to ensure that they have a reasonable chance of success.

## **Bilateral air transportation agreements**

The Agency participates in the negotiation and implementation of international air transport agreements as part of the Government of Canada negotiating team.

In 2015-2016, Agency staff participated in the negotiation of expanded air transport agreements with Cuba, China and Australia.

## **Maximum Revenue Entitlement (MRE) Program for transporting Western grain by rail**

Each year, the Agency is required by the *Canada Transportation Act* to determine the maximum revenue that CN and CP can earn for transporting regulated Western grain, using a formula set out in the Act.

In December 2015, the Agency ruled that CN and CP exceeded their maximum revenue entitlements for crop year 2014-2015.

Company	Entitlement	Grain revenue	Amount above (\$)	Amount above (%)
CN	\$738,202,311	\$745,068,906	+\$6,866,595	+0.9%
CP	\$721,908,606	\$724,045,774	+\$2,137,168	+0.3%

As stipulated in the *Canada Transportation Act*, CN and CP were ordered to pay the excess amount, plus a 5% penalty, to the Western Grains Research Foundation (a farmer-funded and directed organization) within 30 days.

CN was granted leave to appeal the Agency's decision by the Federal Court of Appeal.

In 2015-2016, the Agency also made adjustments to the Volume-Related Composite Price Index (VRCPI) – an inflation index that reflects forecasted price changes for labour, fuel, and material and capital purchases – and clarified how certain elements of the MRE are calculated.

Adjustments to the 2014-2015 VRCPI were made to:

- reflect the costs incurred in replacing government-owned hopper cars with cars from U.S. subsidiaries; and,
- clarify the exchange rate information that will be used in making future hopper car adjustments.

Following consultations, the Agency determined its methodology on how revenues and associated workloads from interswitching and exchange switching should be reflected in the MRE.

In February, the Agency also held a consultation to examine if certain shipments to the Greater Vancouver Area should be eligible under the MRE program. The Agency will make a decision later in 2016.

## **Environmental assessments for railway line construction and crossings**

The Agency approves certain federal railway line construction projects and crossings, taking into consideration requirements for railway operations and services, the interests of localities that will be affected, as well as the surrounding environment.

In 2015-2016, the Agency was involved in 3 environmental assessments, all of which were related to proposed railway line construction projects.

Under the *Canadian Environmental Assessment Act, 2012*, the Agency is also required to review proposed rail construction projects that will occur on federal lands to determine if they will cause significant adverse environmental effects. The Agency reviewed 1 rail construction project that would occur on federal land.

## **Disputes with railway companies**

Part of the Agency's mandate is to help resolve disputes between railway companies and their customers and neighbours.

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.

27 disputes were resolved in 2015-2016:

- 3 through facilitation
- 6 through mediation
- 18 through adjudication

In addition, the Agency can use arbitration to establish a level of service agreement, if a shipper and a carrier are unable to negotiate a contract. The operational terms decided by the arbitrator are confidential and binding on the parties for one year. In 2015-2016, an Agency arbitrator conducted 1 rail level of service arbitration.

In 2015-2016, the Agency also referred 1 case for final offer arbitration, which is used to settle rate disputes between a shipper and a carrier. Final offer arbitration is conducted by an independent arbitrator from the Agency's roster, who will select the final offer of either the shipper or the carrier.

## Guide on noise and vibration from idling locomotives

The *Canada Transportation Act* specifies that noise and vibration caused by railway companies must be reasonable, taking into account the companies' level of service obligations and operational requirements, as well as the surrounding area.

Idling locomotives are one of the main causes of noise and vibration that can affect nearby communities. To provide more information to municipalities and the public, the Agency published a guide in March that explains:

- reasons why locomotives idle;
- characteristics of noise and vibration from idling; and
- potential ways to manage noise and vibration impacts.

The publication was prepared by the Agency in collaboration with its Railway Infrastructure Advisory Committee, comprised of representatives from industry, government organizations and the public.

## Filing of railway crossing agreements

Although parties to a road or utility crossing agreement are not required to file it with the Agency, an agreement can be filed so that it is enforceable as if it were an order of the Agency. The Agency created an online form so railway companies, road authorities or utility companies can easily file their agreements.

For easy reference, the Agency also created a [searchable repository](#) that lists the details of the agreements.

This past year, 84 agreements were filed by parties that had successfully conducted their own negotiations related to crossings.

## Coasting trade applications

The Agency determines whether suitable Canadian vessels are available when applications are made to use foreign vessels for domestic commercial marine activities.

In 2015-2016, the Agency received 80 coasting trade applications where no offer to use a Canadian vessel was made. Of those applications, 5 were withdrawn.

The Agency resolved 1 disputed coasting trade application where a Canadian ship was offered. The Agency ruled that no suitable Canadian ship was available to perform the activity for which a foreign ship was proposed.

The Agency also made several improvements to modernize and improve how it handles coasting trade applications, including switching from facsimile to email to notify interested parties of new applications. People can [sign up for email notifications](#) through the Agency's website.

The [Guidelines Respecting Coasting Trade Licence Applications](#) were updated to reflect the changes.

### **Creation of the Rail and Marine Alternate Dispute Resolution unit**

The Agency created a specialized new work unit to provide facilitation and mediation for rail and marine disputes, as well as support for rail arbitrations. The new unit came into effect on April 1, 2016.

This change was made to achieve internal efficiencies and to ensure that the Agency has the capacity to provide effective and expert dispute resolution services.

# PROTECTING THE HUMAN RIGHT OF PERSONS WITH DISABILITIES TO AN ACCESSIBLE TRANSPORTATION NETWORK

Since 1988, the Agency has had a mandate to protect the human right of persons with disabilities to an accessible transportation network.

To implement this mandate, we:

- create regulations, codes of practice and guidelines for accessibility and promote them through proactive communications and outreach;
- regularly visit transportation service providers, airports, and federal rail and marine terminals to verify that equipment and facilities are accessible and employees have the training they need to serve persons with disabilities;
- resolve individual cases about accessibility through facilitation, mediation or adjudication.

The Agency's decisions on cases about the accessibility of the federal transportation network – such as [the one-person-one-fare decision](#) in 2008 or the 2013 decision on [severe food allergies](#) – can have a lasting impact for persons with disabilities.

## HIGHLIGHTS FROM 2015-2016

### Sign language videos about accessibility complaints

To ensure that its resources are accessible to everyone, the Agency created video adaptations of its Accessible Transportation Complaints publication using American Sign Language and the *Langue des signes québécoise*. Sign language is the primary language of many people who are deaf.

The [videos](#) explain the Agency's processes for resolving accessibility complaints.

### Codes of practice

Updated standards for removing communication barriers were published in March, with the aim of improving accessibility for travellers with disabilities. In addition to improving

the clarity and readability of the [Communication Code](#), the section on telecommunications was updated to reflect changing technologies and links were added to the Agency's resource tools that can help transportation service providers meet the standards in the Code.

The Agency also updated its accessibility standards for Canadian air carriers operating aircraft with 30+ passenger seats. The updates to the [Air Code](#) address storage space for passenger-owned wheelchairs on board aircraft, provide links to the Agency's resource tools and make the Code clearer and easier to read.

### **Training materials for assisting persons with disabilities**

The Agency added new tools – [an online quiz and best practice fact sheets](#) – to its collection of e-learning materials. These resources help federal carriers and terminal operators train their employees and contracted personnel on how to assist people with disabilities.

The materials will enable employees to:

- understand the needs relating to various types of disabilities;
- communicate effectively and appropriately with passengers with disabilities; and
- deliver the necessary service to passengers with disabilities.

The standards for providing this assistance are set out in the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.

### **Compliance reports on voluntary codes of practice**

The Agency undertook three separate monitoring exercises to assess industry compliance with its voluntary codes of practice.

The Agency assessed a ferry terminal in Digby, Nova Scotia, operated by [Bay Ferries Limited](#), and two airport terminals: [Halifax Stanfield International Airport](#) and [Ottawa Macdonald-Cartier International Airport](#).

Each terminal was fully compliant with the accessibility standards that were assessed.

### **Accessibility applications**

The Agency can resolve individual complaints about the accessibility of the federal transportation network on a case-by-case basis.

46 accessibility cases were resolved in 2015-2016:

- 40 through facilitation
- 3 through mediation
- 3 through adjudication

### **Ministerial inquiry into passenger allergies to peanuts, nuts and sesame seeds in commercial air travel**

In February 2015, the Minister of Transport directed the Agency to conduct an inquiry into the issue of passenger allergies to peanuts, nuts and sesame seeds on board aircraft.

The scope of the inquiry included aircraft with 30+ seats on:

- domestic and international flights operated by Canadian air carriers; and,
- international flights to and from Canada operated by foreign air carriers.

Over the past year, an Inquiry Officer appointed by the Agency examined the effectiveness of current risk mitigation measures and consulted with air carriers and allergy associations.

The Inquiry Officer also sought independent expertise on how passengers may be affected when peanut, nut and sesame seed allergens are introduced to them via inhalational, ingestion and topical (dermal) exposure while on board an aircraft, as well as how allergy particles move throughout an aircraft environment.

The Agency will be submitting a report to the Minister with its findings later in 2016.

### **Proactive review of WestJet's Boeing 767**

Upon request, the Agency conducted a proactive review of the accessibility features of WestJet's first Boeing 767, a month before its inaugural flight.

In September 2015, the Agency's expert staff inspected the new aircraft, along with a person with a service dog and representatives from B.C. and Alberta Guide Dogs, to ensure that there was adequate space and accommodations for service dogs and their owners.

The Agency sets out specific accessibility requirements for service dogs on aircraft in its [Implementation Guide Regarding Space for Service Dogs Onboard Large Aircraft](#).

### **New Centre of Expertise on Accessible Transportation**

Recognizing both the importance and the distinct nature of the accessibility issues, the Agency has decided to regroup functions to establish, within its organization, a Centre of Expertise on Accessible Transportation.



The Centre will provide the Agency with research-based insight and advice on matters related to the rights of travellers with disabilities, and will be a key contributor to our work to review regulatory measures in order to improve the accessibility of the transportation network.

# PROVIDING CONSUMER PROTECTION FOR AIR PASSENGERS

The most recent of the Agency's core mandates – and the one that generates the largest number of applications – is to provide consumer protection for air passengers.

To implement this mandate, we:

- provide handy tools to help travellers prepare for their trip, including our [Fly Smart](#) guide
- help air passengers resolve complaints on issues like:
  - flight disruptions and delays
  - lost, delayed or damaged baggage
  - denied boarding or bumping due to overbooking

The majority of complaints are resolved through facilitation. It's fast and easy. Our job is to make sure that the airline has applied the terms and conditions of carriage of its contract and that both the traveller and the airline have met their end of the bargain.

Where less formal processes don't prove successful, the Agency offers a court-like process called adjudication where a panel of Agency Members will make a decision based on the evidence presented by the parties.

The adjudication process can also be used in more complex cases where a passenger feels that the airline's contract is unclear, unjust, unreasonable or discriminatory.

## HIGHLIGHTS FROM 2015-2016

### Videos for air travellers

The Agency launched a series of [videos to help air travellers](#) understand their rights and responsibilities.

Available on the Agency's website, via YouTube and soon at airport terminals and Service Canada centres, these short, informative clips explain in straightforward terms how travellers can deal with some of the most common problems they face and provide useful tips on how to minimize the risk that these issues will arise.

## **Proactive measures to protect passengers' rights**

On August 27, 2015, SkyGreece Airlines announced that it was temporarily suspending operations. Given the seriousness and urgency of the situation, and in response to numerous complaints about a lack of response from the carrier, the Agency decided to examine whether SkyGreece had failed to apply the terms and conditions set out in its tariff – its contract with passengers.

The Agency found, on a preliminary basis, that SkyGreece had failed to meet its legal obligations. The Agency ordered SkyGreece to demonstrate why it should not immediately inform passengers of their options under its tariff, implement the options chosen by passengers, establish a help line and update its website to fully explain the measures in place to address the situation.

The Agency acted swiftly and SkyGreece reacted, declaring bankruptcy soon after. This eliminated the possibility of the Agency pursuing the matter any further. However, the Agency clearly demonstrated that it was willing to use the full extent of its powers to ensure that air carriers respect their contractual obligations to passengers.

## **Air travel complaints**

In 2015-2016, the Agency received 834 new air travel complaints. 250 were carried forward from the previous year and 269 were ongoing at year end.

757 complaints were resolved in 2015-2016:

- 716 through facilitation
- 20 through mediation
- 21 through adjudication

Almost 95% of air travel complaints were resolved through facilitation.

## **Improved air travel complaints process**

In 2015-2016, the Agency made improvements – for the public and for its employees – to the air travel complaints process.

Improvements for the public include the addition of a secure file upload system in the online complaint form, as well as the ability to instantly access specific updates about the status of their case.

To improve the handling of cases, the Agency moved its air travel complaints process into a new case management system, which enabled case officers to manage cases more efficiently and expeditiously.

## Trends in facilitated air travel complaints

The Agency is required by the *Canada Transportation Act* to provide an overview of the all air travel complaints it receives for facilitation – even if it's not one of the air travel issues that the Agency can help with, such as quality of service.

**Note:** These trends only include complaints that were submitted to the Agency for facilitation – they do not reflect the total number of air travel complaints against air carriers. Many travellers resolve their complaints directly with the carrier.

### Issues raised in complaints

Because a single air travel complaint may raise more than one issue, the total number of issues raised in a year always exceeds the number of complaints received. This year, the 826 new air travel complaints received for facilitation raised a total of 1,513 issues.

Flight disruptions were the most common issue, accounting for 42% of all issues raised.

Baggage-related matters (lost, damaged or delayed baggage) represented 20% of the issues raised. Other issues that were frequently cited include quality of service (18%), refusal to transport (8%) and ticketing (8%).

### Air carriers

Over 70 air carriers were named in disputes. A handful of major Canadian and international carriers (Air Canada, WestJet, Air Transat, Sunwing, United Airlines, American Airlines, Lufthansa, British Airways and Alitalia) account for approximately 75% of complaints filed during the period. Over 60 others account for the remaining 25%.

In 2015-2016, 70% of complaints were about Canadian carriers and 30% were about foreign carriers.

### Broader trends

The number of new air travel complaints received for facilitation – 826 – has more than doubled since 2010-2011, when the Agency received 343 new air travel complaints.

For all carriers (Canadian and foreign), and for all routes (domestic and international), over the past 5 years:

- flight disruptions have been, and remain, the most common complaint by passengers, representing an average of 40% of all issues raised each year;
- baggage (lost, damaged and delayed) is the 2<sup>nd</sup> most common complaint, averaging over 20% of all issues raised; and
- other issues, such as ticketing (average of 10% of all issues raised), refusal to transport (9%), reservations (8%), and denied boarding (5%) have each remained relatively steady at these levels for the past 5 years.

The Agency continues to monitor broader trends, to address them with carriers, and to provide guidance to the travelling public about preparing for travel and preventing, where possible, the occurrence of these types of issues before they arise.

# STATISTICS

## Overview

- [Total rulings by Members](#)
- [Disputes resolved by the Agency](#)
- [Fostering compliance](#)

## Providing consumer protection for air passengers

- [Air travel complaints accepted for facilitation](#)
- [Number of air travel complaints resolved \(by carrier\)](#)
- [Issues raised in air travel complaints](#)

## Other statistics by mode of transportation

- [Air carriers holding Agency licences](#)
- [Air licensing activities](#)
- [Air charter permits](#)
- [Air charter flight notifications](#)
- [Railway infrastructure and construction](#)
- [Marine coasting trade applications](#)

# ASSESSMENT OF THE ACT

The Canadian Transportation Agency has the primary responsibility for implementing the *Canada Transportation Act*.

The Agency is required to report on the operation of the Act – and any difficulties observed in its administration – through its Annual Report.

A review of the *Canada Transportation Act* was tabled in Parliament in February 2016. The assessment notes any overlap between our observations and the recommendations contained in the review.

Based on our administration of the Act, we have observations in five key areas:

1. [Codification of the Agency's functions and delegation authority](#)
2. [Recourse for travellers with disabilities](#)
3. [Own-motion authorities](#)
4. [General order powers](#)
5. [Expert reports and data](#)

## 1. Codification of the Agency's functions and delegation authority

The Agency, like a number of other independent federal bodies, performs two key decision-making functions:

- As a quasi-judicial tribunal, it resolves disputes that arise between transportation service providers and their customers and neighbours.
- As an arms-length, expert regulator, it develops rules, interprets compliance obligations, provides guidance, and issues determinations.

These two functions – and the procedural distinctions between them – have been recognized by the courts but are not explicitly outlined in the *Canada Transportation Act*. As well, the Act formally requires that all decisions and determinations be made by Governor in Council-appointed Members.

The *Canada Transportation Act* Review recommended that, "the Government of Canada modernize the mandate of the Agency, giving it greater legislative and regulatory authorities by [...] amending the *Canada Transportation Act* to allow the Chair of the Agency to delegate identified, routine regulatory approvals to Agency staff".

### Observations

Some parties have argued that quasi-judicial procedures applicable to adjudications – procedures that exist to protect the interests of the parties to a dispute – should apply to all the Agency's activities, even when it is engaging in regulatory determinations rather than dispute resolution. Although the courts have rejected this view, updated statutory language could help remove any confusion, avoid fruitless litigation, and reduce the risk that often straightforward determinations will become unnecessarily bogged down.

Certain types of the Agency's regulatory determinations in air – including many pertaining to charter permits or licensing activities – have become relatively routine and involve little discretion. Delegation of those determinations to staff would be consistent with the authorities and best practices of other organizations and would free up Members' time to deal with adjudications and more significant regulatory determinations.

Consideration should therefore be given, in the interests of clarity and efficiency, to legislative amendments that articulate and distinguish the Agency's adjudicative and regulatory functions and allow the Agency to delegate specific, routine regulatory determinations to staff.

## 2. Recourse for travellers with disabilities

Accessible transportation services are critical to ensuring that persons with disabilities are able to live independently and participate fully in all aspects of life. Since 1988, the



Agency has had a mandate to protect this fundamental right by ensuring that undue obstacles to mobility are removed from federal transportation network.

Under the *Canadian Human Rights Act*, the Canadian Human Rights Commission (CHRC) and the Canadian Human Rights Tribunal (CHRT) also have responsibilities for disability-related complaints, and can award compensation for, among other things, lost wages, pain and suffering, and wilful and reckless discrimination, which the Agency is not currently able to do.

The *Canada Transportation Act* Review recommended that, given its expertise, the Agency be given exclusive jurisdiction over disability-related cases in the federal transportation network, including the ability to award compensation for pain and suffering.

### **Observations**

Jurisdictional ambiguity can be problematic. In one instance, it resulted in a situation where the CHRT considered the same complaint as the Agency, after the Agency had already rendered a decision – and arrived at a different conclusion. The Federal Court of Appeal eventually ruled that the CHRT could not reconsider a matter already adjudicated by the Agency, but it did not address the question of whether the Agency has exclusive jurisdiction over disability-related cases involving the federal transportation network.

More generally, jurisdictional ambiguity means that travellers with disabilities who want to bring forward accessibility-related complaints can face uncertainty about which body is the right one to approach, and increases the likelihood of inconsistent decision-making and unpredictability for transportation service providers. Differences in potential remedies where complaints are substantiated further complicate the situation and are neither sensible nor fair. The Agency has the specialized expertise required to protect the human rights of Canadians with disabilities in the unique context of the federal transportation system.

To address these issues, the *Canada Transportation Act* could be amended to confirm that the Agency has exclusive jurisdiction for adjudicative and regulatory activities related to the accessibility of the national transportation system, and to fully align the remedies available to persons with disabilities under the *Canada Transportation Act* and the *Canadian Human Rights Act*.

### **3. Own-motion authorities**

The Agency's ability to act under most provisions of the *Canada Transportation Act* is triggered by an application or a complaint. For instance, although the Agency is allowed to act on its own motion with respect to air carrier tariffs for international services, it can only examine and potentially correct issues with domestic tariff provisions in cases where an application has been received. Similarly, the Agency's power under section 116 of the

*Canada Transportation Act* to order measures to address rail level of service issues is conditional on the receipt of a complaint.

Other expert tribunals and regulators often have broader own motion authorities, as does the Surface Transportation Board in the United States. The *Canada Transportation Act* Review recommended that the Act be amended to give the Agency "investigative powers, and the authority to act on the Agency's own motion and on an *ex parte* basis".

## **Observations**

An extension of the Agency's own-motion authority would allow for the proactive initiation of inquiries where there are reasonable grounds for believing a problem might exist. Such grounds could include statistical evidence, a pattern of complaints, or consistent and credible media reports regarding a transportation service provider's financial difficulties or service failings.

This authority would be particularly relevant to matters affecting more than one transportation service provider or user, for which the existing complaint-based process is not particularly well-suited. Examples could include practices affecting persons with disabilities across the air sector or issues in the entire transportation supply chain for certain commodities.

Own-motion proceedings in such circumstances would:

- reduce the need for individual travellers or shippers to bring forward a complaint about broad-based issues;
- allow the Agency to respond nimbly and effectively to systemic concerns or changes;
- permit the Agency to have a broader view of the problem and its implications across industry leading to more well-informed decision-making;
- ensure more consistent standards for transportation users; and
- help create a level playing field for providers.

## **4. General order powers**

The Agency's order-making authorities are generally restricted to remedying the specific situation identified in an application, even if the same issue is understood to exist more widely beyond the parties to the application.

The ability to make general orders to correct broad-based issues is part of the modern toolkit of many tribunals and regulators. The *Canada Transportation Act* Review recommended that the Act be amended to give the Agency the authority "to address issues on a systemic basis and to issue general orders".

## Observations

The fact that the Agency is unable to provide systemic remedies for industry-wide issues – and instead, must establish obligations and protect rights on a case-by-case basis – has several consequences:

- *Inefficiency*: when essentially the same matter must be re-litigated several times to establish sector-wide standards, complainants' and the Agency's resources are used inefficiently.
- *Confusion*: when the policies of transportation service providers on the same matter differ because the Agency has been unable to issue a general order, it can be challenging for customers and consumers to compare services or understand their rights and responsibilities.
- *Uneven playing field*: as an Agency decision only applies to the transportation service provider identified in the complaint, any measures ordered in the decision may place that service provider at a competitive disadvantage.

The ability to issue orders across a group of service providers would complement existing processes, allow the Agency to craft remedies tailored to the circumstances, and facilitate consistent and coherent approaches to broad-based matters. If the Agency has the ability to make general orders, it would be in the interests of industry, shippers, persons with disabilities, and air travellers.

## 5. Expert reports and data

In order to carry out its adjudicative and regulatory responsibilities, the Agency sometimes requires expert, technical advice in areas such as accessibility, rail-related noise and vibration, and environmental effects. More generally, effective decision-making is facilitated by having access to information on the overall performance of carriers and sectors.

The Agency, however, has limited authority to obtain such advice and data, in contrast to other arms-length tribunals and regulators in Canada and the Surface Transportation Board in the United States.

The *Canada Transportation Act* Review recommended that the Agency be provided with "legislative authority to access and obtain relevant and strategic data consistent with its mandate" and stated that "a new Integrated Data Platform and Multimodal Data Dashboard should be established, preferably within the Canadian Transportation Agency, to support evidence-based decision making and a more efficient and responsive transportation network among public and private sector stakeholders."

## Observations

In some instances – including cases brought forward by persons with disabilities or residents of neighbourhoods near rail operations – applicants are unrepresented and unable to bear the burden of paying for expert reports needed to inform Agency decision-making. To require them to do so would create a significant access to justice issue. Ad hoc solutions to this problem have been found in the past: in a number of proceedings, parties have agreed to produce expert studies at their own expense, and in others, the Agency has used its own budget to retain experts or *amicus curiae* to present one side of the case and test evidence. However, the Agency's resources are stretched and there are no legislative provisions that allow it to order parties to produce or pay for studies by independent experts, except in very limited circumstances (e.g., for net salvage value determinations).

In addition, although performance information related to particular complaints is filed by transportation service providers with the Agency, it tends to be highly specific in nature. An ability to receive and analyse broader performance data held by carriers would be helpful to the Agency in discharging its responsibilities. And the authority to release those data and analyses in aggregated form would assist other decision-makers – including Ministers and Parliamentarians – and all stakeholders to get a fuller, clearer picture of the state of the transportation system.

To support well-informed decision-making, Parliament could consider giving the Agency the authority to require parties to a dispute adjudication to produce or fund expert reports, and to require carriers to provide performance data.