



Canadian
Transportation
Agency

Office
des transports
du Canada

ANNUAL REPORT 2016-2017



Canada 

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Catalogue No. TT1E-PDF
ISSN 1494-7927

Available in multiple formats
Version française disponible

May 2017

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 2016–2017, 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 be 'S. Streiner', with a stylized flourish extending to the right.

Scott Streiner
Chair and Chief Executive Officer

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Message from the Chair and CEO



An efficient, competitive, and accessible national transportation system makes vital contributions to the economic and social well-being of all Canadians. In 2016–2017, the Agency embarked on an ambitious change agenda grounded in the pursuit of these results.

As the fiscal year began, we implemented a significant reorganization that clarified the responsibilities of different branches of the Agency, strengthened capacity in key areas, and directed more resources to delivery. Together with our On the Move workplace action plan, adopted a few months earlier, these organizational adjustments positioned the Agency to respond with greater agility and energy to the demands before it.

In May 2016, we launched the Regulatory Modernization Initiative (RMI), the most comprehensive effort in the Agency's 113-year history to update the regulatory provisions it administers. The RMI started with consultations on accessible transportation regulations, followed by consultations on air licencing and charter regulations as well as the process for determining whether air carriers based in Canada are controlled by Canadians. Consultations on rail-related regulations and air consumer protection regulations will take place later in 2017.

In the summer, we began a project to develop a more systematic, data-driven, risk-based approach to compliance monitoring and enforcement, drawing on best practices from across and beyond the Government of Canada.

In the fall, we initiated efforts to better inform Canadians about their rights and responsibilities when they use the national transportation system, and the Agency's roles and services. The results have been striking: in 2016–2017, we received 3,367 new complaints from air passengers on matters such as bumping and lost baggage – an increase of over 300% from 2015–2016. We also resolved 69 complaints from travellers with disabilities regarding accessibility issues – an increase of 50% from 2015–2016.

Finally, in early 2017, after a series of internal discussions that involved all staff, we established four strategic priorities for the 2017–2020 period: a modern framework, excellence in service delivery, public awareness of our roles and services, and – underpinning these externally-focused priorities – a healthy, high-performing organization.

This is a remarkable scope and level of activity for a small organization with big mandates, and it's a credit to our team of five Members and 220 public servants that we were able to accomplish so much in 2016–2017. We'll no doubt continue to be busy in the year to come. And we'll continue to meet this challenge with focus, professionalism, and an unwavering commitment to impartial, evidence-based decision making.

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

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 service 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 service providers and users, and the Agency's legislation and services.

Regulatory Modernization Initiative

In May 2016, the Agency announced its Regulatory Modernization Initiative (RMI) – a full review of all the regulations, guidelines and tools that it administers.

The Agency intends to transform its regulations and tools to keep pace with changes in business models, user expectations and best practices in the regulatory field.

The RMI has three key goals:

- ensuring that industry's obligations are clear, predictable, and relevant to a range of existing and emerging business practices;
- ensuring that the demands associated with compliance are only as high as necessary to achieve the regulations' purposes; and,
- facilitating the efficient and effective identification and correction of instances of non-compliance.

The Agency plans to conduct consultations on all elements of the RMI and draft updated regulations by the end of 2017, and to complete approvals of updated regulations and begin their implementation in 2018.

This year, the Agency launched the first two phases of the Initiative, focusing on accessible transportation and air transportation.

Phase 1: Accessible transportation

- Phase 1 of the RMI consultation process focuses on regulations related to the accessibility of the national transportation system for persons with disabilities.

The Agency currently administers two sets of regulations on accessibility.

- Part VII of the *Air Transportation Regulations* applies to domestic flights using aircraft with 30+ seats
- The *Personnel Training for the Assistance of Persons with Disabilities Regulations* require air and federal rail and ferry carriers and terminal operators to ensure that their employees and contractors are trained to provide transportation services to persons with disabilities

The Agency also sets out expectations for the accessibility of the federal transportation network through codes of practice.

As part of the RMI, the Agency is looking at turning the voluntary codes of practice into mandatory regulations and updating their provisions to reflect the experience of the last two decades and best practices across Canada and around the world.

To ensure that all interested Canadians have an opportunity to provide feedback, the Agency launched a public consultation in June 2016 on how regulatory measures can

help make the federal transportation network accessible for persons with disabilities. In June, the Chair of the Agency also convened a meeting of the Agency's Accessibility Advisory Committee to discuss regulatory reform and accessible transportation services.

See the [accessible transportation consultation](#)

Phase 2: Air transportation

Phase 2 of the RMI consultation process, launched in December 2016, deals with air transportation regulations in areas such as licencing, charter permits, and compliance monitoring and enforcement.

The Agency delivers its air transportation mandate through the administration of the *Canada Transportation Act* and the *Air Transportation Regulations*.

The Agency is also taking this opportunity to ask for feedback on its process for assessing Canadian ownership levels, given its links with the air licensing process. With the planned increase in thresholds in foreign ownership announced by the Government, it is even more important for the Agency to have a predictable, up-to-date set of criteria and steps for determining if an air carrier is, as required by law, "controlled in fact" by Canadians.

See the [air transportation consultation](#)

1. 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, the Agency:

- oversees 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;
- helps 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 2016–2017

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 2016–2017, new scheduled international licences were issued for services between Canada and the following countries:

Country	Canadian airline
Belize	WestJet
Belize, Burundi, Guinea, Iceland, Malaysia, Sri Lanka	Air Canada
Bermuda, Member States of the European Community	Cargojet Airways Ltd.
Israel	Air Transat A.T. Inc.
United States of America	1590877 Alberta Inc. carrying on business as Northstar Air Tours

In 2016–2017, the Agency analyzed 46 licence applications where it was required to verify applicable Canadian ownership and control requirements. After determining that the applicants met the requirements, the Agency approved all 46 applications, including 18 from 13 first-time applicants.

In order to minimize disruptions in service and protect customers, the Agency also reviewed the financial fitness of 2 Canadian applicants that wanted to offer domestic or international services on aircraft with more than 39 seats. Both applications remained outstanding at year end as the applicants had not yet met all the licensing requirements. The Agency's review is intended to ensure that applicants are financially fit and adequately financed, through a combination of equity and other sources, at the inception of the proposed air services.

BILATERAL AIR TRANSPORT AGREEMENTS

The Agency participates in the negotiation and implementation of international air transport agreements as part of the Government of Canada negotiating team, which also includes Transport Canada and Global Affairs Canada.

In 2016–2017, Agency staff participated in negotiations resulting in new air transport agreements with Saint Lucia, Antigua & Barbuda, Benin, Belize, Mauritius, Seychelles, Sri Lanka, Tanzania, Guinea and The Bahamas and in expanded air transport agreements with China, Mexico and Singapore.

Agency staff participate as subject matter experts on Canadian legislative and regulatory requirements, given the Agency's role as a designated aeronautical authority for Canada. As aeronautical authority, the Agency issues licences to operate scheduled international air services and administers tariff matters, among others, in accordance with these agreements.

INSURANCE REQUIREMENTS FOR FEDERALLY-REGULATED FREIGHT RAILWAY COMPANIES

New liability insurance requirements for federally-regulated freight railway companies came into effect on June 18, 2016.

Railway companies now have to meet minimum insurance coverage requirements, for the carriage of freight, to obtain and hold a certificate of fitness to operate. The insurance requirements are based on the volume and type of dangerous goods that the railway companies transport each year, such as crude oil and toxic inhalation hazard materials.

Transitional insurance levels apply for a one-year transition period, with the final levels coming into effect on June 18, 2017.

The legislated minimum liability insurance levels are as follows:

Volumes per calendar year	Amount per occurrence (\$ million)	
	Transitional	Final
None of the situations described below	\$25	\$25
Less than 4,000 tonnes of TIH materials, less than 100,000 tonnes of crude oil, or at least 40,000 tonnes of other dangerous goods	\$50	\$100
At least 4,000 tonnes but less than 50,000 tonnes of TIH materials, or at least 100,000 tonnes but less than 1.5 million tonnes of crude oil	\$125	\$250
At least 50,000 tonnes of TIH materials or at least 1.5 million tonnes of crude oil	\$1,000	\$1,000

All railway companies provided Certificate of Insurance and Certificate of Compliance forms to the Agency on or before June 18, 2016. The Agency continues to monitor railway companies' compliance with the new liability insurance requirements.

To help stakeholders understand and comply with the new requirements and ongoing obligations, the Agency published an implementation guide.

See a list of [federal railway companies](#)

Read the [Implementation Guide: Insurance Requirements for Federally Regulated Freight Railway Companies](#)

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 2016, the Agency ruled that CN and CP exceeded their maximum revenue entitlements for crop year 2015–2016.

Company	Entitlement	Grain revenue	Amount above (\$)
CN	\$684,749,693	\$685,791,606	+\$1,041,913
CP	\$677,879,839	\$681,266,322	+\$3,386,483

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.

See a [list of MRE determinations](#)

In 2015–2016, the Agency also clarified how certain elements of the MRE are calculated. Following consultations, the Agency issued decisions on the eligibility of certain traffic destined to the port of Vancouver and whether mileages beyond CN's main yard facilities within the ports of Vancouver and Thunder Bay should be included when calculating the MRE.

See the [decision on eligibility](#) and the [decision on mileage](#)

In September 2016, the Agency also held a consultation on measures to standardize some of the factors that it uses in MRE and regulatory cost determinations.

The Agency sought views on two issues relating to the determination of the cost of capital for CN and CP (the amount that each company must earn per dollar of capital invested in order to pay interest on long-term debt, taxes, and provide a return to shareholders commensurate with the risk):

- the specific items to be included in a determination of the capital structure (the sources of financing used by a company to acquire its capital assets)
- a methodology for determining the working capital allowance component of the capital structure (the cash and inventory that each railway company needs to keep on hand for day-to-day operations)

After reviewing stakeholders' comments, the Agency will issue a decision to update its methodology.

CONSULTATION ON THE AGENCY'S REGULATORY COSTING MODEL

The Agency's regulatory costing model is the broad set of relationships used in determining regulatory costs for all federal railway companies subject to the *Canada Transportation Act*.

In Decision [2015-R-91](#), the Agency directed its staff to initiate a comprehensive review of the entire costing model to account for changes in how railway companies operate; how the accounting structure has changed; and how regulatory cost information is used. The intent of the update is to ensure that the costing model is accurate, transparent and provides the best practical approach to determining regulatory rates.

The Agency held a consultation process on these matters in January and February 2017.

The Agency will decide on the appropriate methodology after it considers the comments of all parties.

Review the [submissions to the regulatory costing model](#)

REVIEW PANEL FOR THE MILTON LOGISTICS HUB PROJECT

On December 6, 2016, the Chair and CEO of the Agency entered into an agreement with the Minister of the Environment and Climate Change to undertake a joint review process on CN's proposed Logistics Hub Project in Milton, Ontario.

A Member of the Agency was assigned by the Chair and CEO to decide whether the proposed rail construction should be approved under section 98 of the *Canada Transportation Act*. The Minister then cross-appointed that Member to a three-person review panel responsible for conducting an environmental assessment of the project.

If the project is not prevented from proceeding on environmental grounds after the review panel submits its report to the Minister and the Government responds to that report, the Member will determine if the locations of the railway lines are reasonable, taking into consideration the requirements for railway operations and services as well as the interests of the localities.

The joint process, including public hearings, will make it easier and more efficient for CN, Indigenous groups and community members to make written and verbal submissions related to both the environmental assessment and the determination under section 98 of the *Canada Transportation Act*.

Read the [Agreement to Establish a Joint Process for the Review of the Milton Logistics Hub Project](#)

Learn more about the [Milton Logistics Hub Project](#)

CONSULTATION ON RAILWAY LINE CONSTRUCTION GUIDE AND INDIGENOUS ENGAGEMENT FRAMEWORK

In March 2017, the Agency launched a consultation on two draft guidance documents related to railway line construction: a guide on applying for Agency approval and a framework for Indigenous engagement.

The guide outlines the process that railway companies should follow and information that they must provide when seeking approval to construct a federal-regulated railway line. The framework consolidates the Agency's expectations on how applicants are to engage Indigenous communities when proposing to construct a railway line.

Final versions of both documents will be published later in 2017.

See the [consultation on the two guidance documents](#)

DISPUTES BETWEEN RAILWAY COMPANIES AND THEIR CUSTOMERS OR NEIGHBOURS

Part of the Agency's mandate is to help resolve disputes between railway companies and their customers and neighbours. One or both parties can ask the Agency for assistance.

29 disputes were resolved in 2016–2017:

- 14 through facilitation
- 7 through mediation
- 8 through adjudication

In addition, the Agency offers two distinct arbitration processes: rail level of service arbitration and final offer arbitration.

Rail level of service arbitration can be used by shippers to establish a service contract following unsuccessful negotiation with a railway company. This type of arbitration focuses on resolving service issues such as quantity of cars to be delivered and the timing of their delivery; loading and transit times; and communication protocols. The Agency appoints the arbitrator who then has up to 65 days to issue a decision, which is valid for one year. The arbitrator may combine resolutions proposed by both parties.

In 2016–2017, the Agency did not receive any requests for rail level of service arbitration.

In July 2016, the Agency published new procedures for the adjudication of objections to rail level of service arbitration submissions.

Read the [procedures for the adjudication of objections](#)

Final offer arbitration can be used by shippers to settle disputes about rates charged by a carrier for the movement of goods. For this type of arbitration, the parties choose an independent arbitrator from the Agency's roster. If the parties cannot agree on an

arbitrator, the Agency will appoint one. The arbitrator must select the final offer made by either the shipper or the carrier within 60 days for a regular process and within 30 days for a summary process. The decision is valid for one year.

In 2016–2017, the Agency referred 3 cases for final offer arbitration.

DECISION ON UNIVAR V. CP

In 2016, Univar (a Canadian distributor of chemicals and related products and services) turned to the Agency's formal adjudication process to resolve a shipping dispute with CP. Univar argued that CP failed to fulfill its level of service obligations following a fire in 2014 that damaged a bridge used to provide direct rail service to Univar's facility in Richmond, British Columbia.

CP denied that it had breached its level of service obligations, stating that it was unable to provide direct rail service to Univar as a result of circumstances beyond its control; namely, the fire and a subsequent barge strike that further damaged the bridge.

In its decision, the Agency ruled that an event beyond a railway company's control may temporarily make it unreasonable for it to provide direct service, but does not relieve the company permanently from its service obligations. In that case, the Agency found that it was not reasonable for CP to provide direct rail service to Univar during two reasonable pause periods after the fire and the barge strike, as CP would have needed this time to rehabilitate the bridge. However, the Agency also found that CP could not end Univar's direct service in perpetuity by refusing to rehabilitate the bridge after two events; instead to end Univar's direct service, CP would have to complete the transfer and discontinuance process. Therefore, the Agency found that CP owed Univar compensation for its failure to provide direct service outside the two reasonable pause periods.

The Agency's decision was made following an oral hearing held on October 13 and 14, 2016 in Vancouver. The oral hearing was the Agency's first in 9 years. The return to oral hearings is one of the improvements that the Agency is making to its dispute resolution processes. An oral hearing can be more efficient than written pleadings alone where competing arguments and evidence need to be tested. It can also enhance the transparency of adjudicative processes.

See the [decision on Univar v. CP](#)

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.

This past year, 127 agreements were filed by parties that had successfully conducted their own negotiations related to crossings.

See a [list of railway crossing agreements](#) that were accepted as filed

MEMORANDUM OF UNDERSTANDING WITH THE UNITED STATES SURFACE TRANSPORTATION BOARD ON INFORMATION SHARING AND ENGAGEMENT

In 2016, the Chair and CEO of the Agency and the Chairman of the United States Surface Transportation Board met in Gatineau, Quebec, and Washington, DC, to discuss ways to support ongoing exchanges and collaboration between the two agencies. On December 8, 2016, they signed a MOU at the Agency's headquarters.

The MOU commits the organizations to share information and best practices related to the discharge of their adjudicative and regulatory mandates, as well as developments in rail transportation.

The MOU reflects the integrated nature of the North American freight rail system and serves as a foundation for ongoing engagement and information exchanges between the Agency and the Surface Transportation Board.

Read the [Memorandum of Understanding](#)

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 2016–2017, the Agency received 110 coasting trade applications where no offer to use a Canadian vessel was made. Of those applications, 2 were withdrawn.

Canadian shippers contested 5 coasting trade applications. In each of those cases, the Agency determined that a Canadian ship was available and suitable to perform the activity instead of the proposed foreign ship.

NEW RISK-BASED COMPLIANCE MONITORING MODEL

In 2016–2017 the Agency developed a new model that is systematic, data-driven and risk-based to guide its compliance and monitoring activities. This model focuses limited Agency resources on companies whose activities represent the highest level of risk.

The model includes a new measurement framework for identifying risk among domestic air licensees and a methodology to assess the impact of the regulated activities of licensees. As with all such models, it is the intersection of risk and impact that helps the Agency identify which targeted actions, such as education, outreach, or onsite inspections, should be deployed to achieve compliance.

Next year, the Agency will expand the Compliance Assurance Program that will enable it to improve its oversight across the rail, air and marine modes.

2. Protecting the fundamental right of persons with disabilities to an accessible transportation network

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

To implement this mandate, the Agency:

- creates regulations, codes of practice and guidelines for accessibility and promotes them through proactive communications and outreach;
- regularly visits carriers and terminal operators to verify that equipment and facilities are accessible and that employees have the training they need to serve persons with disabilities;
- resolves cases about accessibility through facilitation, mediation or adjudication.

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

Highlights from 2016–2017

COMPLIANCE REPORT ON WEBSITE ACCESSIBILITY

Many travellers use transportation service providers' websites to book a trip. But unless these websites are designed properly, they can pose accessibility challenges for persons with disabilities.

In 2011, the Agency began a multi-year monitoring exercise to see if major transportation service providers' websites were meeting the accessibility requirements set out in the [Communication Code](#).

The air carriers selected for monitoring collectively carried approximately 74% of the passenger traffic in Canada at the time of their selection:

- Air Canada;
- WestJet;
- Air Transat;
- Sunwing;
- CanJet; and,
- Porter.

The 8 largest airports in terms of revenue passenger traffic were selected for monitoring. At the time of their selection, these airports accounted for approximately 83% of total revenue passenger traffic in Canada:

- Calgary International Airport;
- Edmonton International Airport;
- Halifax Stanfield International Airport;
- Montréal-Pierre Elliott Trudeau International Airport;
- Ottawa Macdonald-Cartier International Airport;
- Toronto Pearson International Airport;
- Vancouver International Airport; and,
- Winnipeg James Armstrong Richardson International Airport.

The sole rail carrier chosen for monitoring accounted for 91% of all intercity traffic in Canada. The largest ferry operators – in terms of passenger traffic – were also selected for monitoring:

- VIA;
- Marine Atlantic; and,
- Northumberland and Bay Ferries.

The monitoring focussed on tasks that a person with a disability might complete when planning or booking a trip: making a reservation, checking the status of arrival and departures, and finding information about accessibility services.

The Agency shared the results with the transportation service providers and gave them practical guidance for addressing issues.

After conducting a final assessment, the Agency found that most transportation service providers had significantly enhanced the accessibility of their websites since completion of the follow-up monitoring or had planned significant redevelopments of their websites.

Agency staff will continue to monitor progress on the redevelopments and will provide guidance, as appropriate.

Read the [Compliance Report: Website Accessibility](#)

WEBSITE ACCESSIBILITY RESOURCE TOOL

In January 2017, the Agency published guidance for transportation service providers on how to fix or avoid common website accessibility issues so that persons with disabilities can have equal access to transportation sites.

The resource tool includes:

- an overview of web accessibility standards (WCAG 2.0) and examples of why web accessibility is important;
- how to assess the accessibility of websites and work with web developers; and,
- how to identify and resolve common accessibility problems with transportation service providers' websites.

While the resource tool can benefit all service providers, it is specifically intended to provide assistance to service providers whose websites were not evaluated during the Agency's monitoring exercise.

Read [Website Accessibility: A Resource Tool for Transportation-Related Websites](#)

RECOMMENDATIONS RELATED TO PEANUT, NUT AND SESAME SEED ALLERGIES AND AIR TRAVEL

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

An Inquiry Officer was appointed by the Agency to examine the effectiveness of current risk mitigation measures and to consult with air carriers, allergy associations and independent experts.

In June 2016, the Agency submitted a report to the Minister with its findings. The experts contracted by the Agency's Inquiry Officer found little evidence of a risk of allergic reactions due to inhalation or skin contact with peanuts, nuts or sesame seeds. Only accidental ingestion posed a risk of serious allergic reaction.

The findings will be used to inform future Agency actions, including through its Regulatory Modernization Initiative. Actions could include the development of standards and guidance materials in order to address this issue on a systemic basis.

Read the [Ministerial Inquiry into Allergies to Peanuts, Nuts and Sesame Seeds in Commercial Air Travel - Report of the Inquiry Officer](#)

COMPLIANCE REPORT ON ACCESSIBLE GROUND TRANSPORTATION AT AIRPORTS

Airports are expected to include accessibility requirements in their contracts with ground transportation service providers – including bus, shuttle, taxi and car rental companies – because ground transportation can be a necessary element of someone's trip.

The Agency did a monitoring exercise to assess compliance with its voluntary codes of practice and regulatory provisions related to training contractors.

The Agency found that most airports used best practices that go beyond expectations. Out of 23 airports, 15 were fully compliant with the accessibility standards that were assessed. All of the remaining airports have committed to becoming fully compliant as contracts are updated.

Read the [Compliance Report: Accessible Ground Transportation at Airports](#)

COMPLIANCE REPORT ON MONTRÉAL-PIERRE ELLIOTT TRUDEAU INTERNATIONAL AIRPORT

In 2016, the Agency conducted an assessment of the Montréal-Pierre Elliott Trudeau Airport, including:

- the accessibility features of its facilities;
- how information on available services is provided on the day of travel and on the airport's website;
- accessibility awareness training of staff and any contracted personnel who interact with persons with disabilities.

The Agency assessed the Montréal-Pierre Elliott Trudeau Airport's compliance with key provisions in the [Terminal Code](#), the [Communication Code](#) and the [Personnel Training for the Assistance of Persons with Disabilities Regulations](#).

The Agency found that the airport is compliant with most of the accessibility standards that were assessed. For instance, the airport has an up-to-date training plan to ensure that employees and contractors are trained to meet the needs of passengers with disabilities. The Montréal-Pierre Elliott Trudeau Airport also demonstrated a commitment to improving the accessibility of its facilities as it undergoes upgrades and renovations.

Read the [Compliance Report: Montréal-Pierre Elliott Trudeau International Airport](#)

ACCESSIBILITY APPLICATIONS

The Agency can resolve complaints about the accessibility of the federal transportation network on a case-by-case basis. This year the Agency received significantly more accessibility applications as a result of its efforts to raise public awareness of its services, and its championing of the government commitment to ensure greater accessibility and opportunities for Canadians with disabilities.

69 accessibility cases were resolved in 2016–2017:

- 53 through facilitation
- 10 through mediation
- 6 through adjudication

These figures represent a 50% increase from the previous year where 46 accessibility cases were resolved (40 through facilitation, 3 through mediation, and 3 through the formal adjudicative process).

Some key decisions this year involved proper accommodations for visible and invisible disabilities. For instance, the Agency ordered Lufthansa and Air Canada to modify and enforce their respective seating policies to accommodate persons who require a specific seat type as a result of a disability, including persons with post-traumatic stress disorder. The Agency also ordered VIA to install a new lift at the Kingston station to accommodate persons with disabilities who travel with different mobility devices, and to train its personnel on the accommodation of particular needs of passengers with disabilities, including invisible disabilities.

VIA RAIL ACCESSIBILITY DECISION

Marie Murphy and Martin Anderson filed an accessibility application against VIA, challenging its policy for scooter storage. The applicants both need scooters as a result of disabilities and have experienced difficulties for years travelling with VIA. In their application, they submitted that VIA's current policy is ineffective, as it requires storing one scooter in the wheelchair tie-down area within the passenger compartment and the other scooter in the baggage module.

The Agency considered whether the applicants' issues constituted an obstacle to their mobility and, if so, whether the obstacle could be removed without causing undue hardship to VIA.

The Agency issued its decision on February 15, 2017, in which it found that an obstacle exists and ordered VIA, at a minimum, to provide more guidance to its personnel and to explore potentially storing two scooters in one tie-down area or ensuring that each train has more than one tie-down area. Following this exploration, VIA must either change its policy or submit evidence that taking these measures would cause it undue hardship.

On March 27, 2017, VIA announced that it would appeal the Agency's decision.

See the [VIA Rail decision](#)

INCREASING COOPERATION WITH THE CANADIAN HUMAN RIGHTS COMMISSION

The Agency and the Canadian Human Rights Commission (CHRC) both deal with matters related to accessibility and accommodation for persons with disabilities. From time to time, the organizations may be asked to address similar issues or concerns.

This year the Agency's Chair and CEO met with CHRC Chief Commissioner Marie-Claude Landry to discuss steps that the organizations can take to strengthen collaboration and coordination, foster complementary policies and practices, and avoid

jurisdictional issues. They agreed to have their respective teams work together on an updated Memorandum of Agreement that will facilitate cooperation and efficient service to Canadians with disabilities. The Memorandum of Agreement is expected to take effect by mid-2017.

3. Providing consumer protection for air passengers

The Agency's mandate that generates the largest number of applications is consumer protection for air passengers.

The Agency implements this mandate in part by providing tools, information and guidance to help travellers prepare for their trip. For example, the Agency's [Fly Smart](#) publication and [short videos](#) help travellers understand their rights and responsibilities, which are set out in [airlines' tariffs](#), also known as their terms and conditions of carriage.

In addition, if travellers encounter difficulties that they cannot resolve directly with an airline, the Agency may be able to help. The Agency can resolve [complaints](#) on issues like:

- flight disruptions and delays;
- lost, delayed or damaged baggage; and,
- denied boarding or bumping due to overbooking.

The vast majority of complaints are resolved quickly and informally through [facilitation](#) or [mediation](#). The Agency also conducts [adjudication](#) to deal with complaints and issues that are not fully and finally resolved through facilitation or mediation.

Your great effort in helping us out with this issue was greatly appreciated....
Again we want to thank you for your pleasant, efficient service and for keeping us updated on the issue.

– John and Maria Agius

Finally, the Agency uses its own motion powers to proactively engage with airlines and undertake compliance monitoring activities to ensure, among other things, that airlines' terms and conditions of carriage for international flights are:

- in line with all applicable legislation, regulations, international conventions, and Agency decisions;
- reasonable and clear;
- not unjust or unduly discriminatory; and,
- adhered to by the airlines.

Highlights from 2016–2017

INCREASED PUBLIC OUTREACH AND ENGAGEMENT EFFORTS

It is important that air travellers be aware of their rights and responsibilities, as well as the recourse mechanisms available to them, including the Agency's dispute resolution services. To help achieve this awareness, the Agency redoubled public outreach and engagement efforts in 2016–2017.

The Agency also encouraged Canada's largest airlines to:

- post summaries of terms and conditions of carriage most likely to be of concern to travellers in a prominent place on their websites;
- ensure that their tariffs are easy to find, search and understand; and,
- add information to websites, in-flight magazines and entertainment systems about passengers' rights and responsibilities and how to resolve problems if they arise.

The Agency engaged with Canadians on social media and raised awareness of its air travel complaint services through targeted advertising. These outreach efforts are working – more air travellers are accessing the Agency's services than ever before.

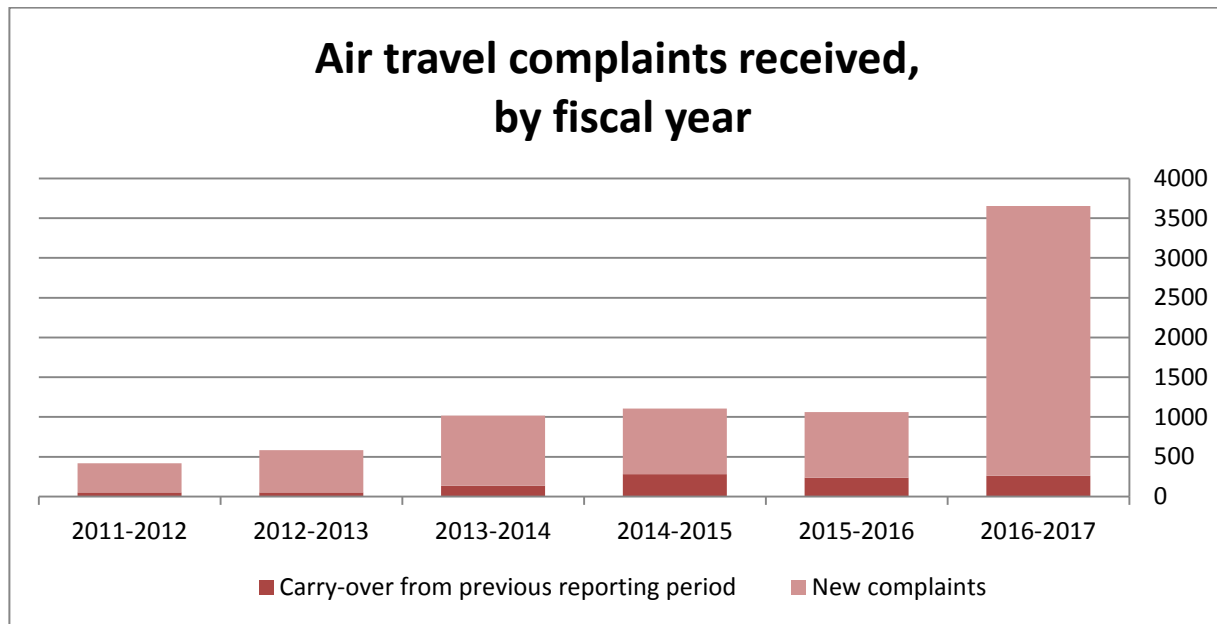
To ensure that air travellers understand their rights and responsibilities, the Agency also promoted its [Fly Smart](#) publication and [short videos](#), highlighting useful tips and information on how to deal with common problems.

[Follow the Agency on Twitter](#)

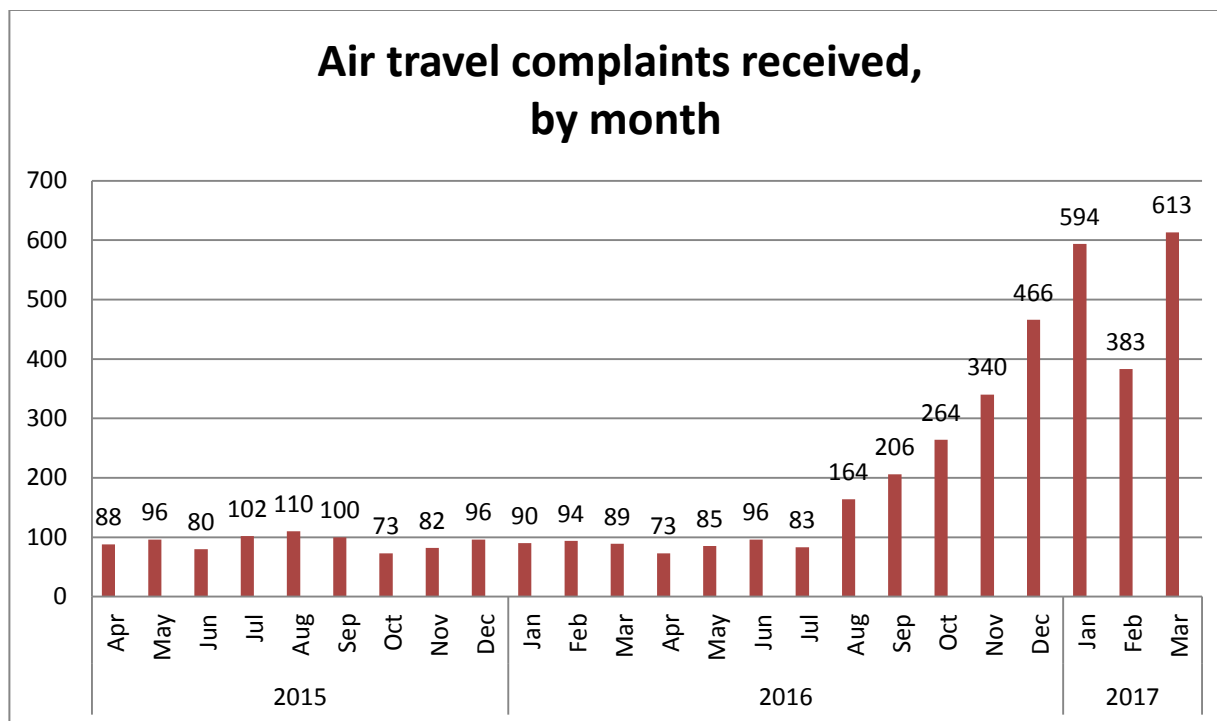
[Like the Agency on Facebook](#)

SIGNIFICANT INCREASE IN AIR TRAVEL COMPLAINTS RECEIVED

The 3,367 new air travel complaints filed in 2016–2017 is nearly equal to the number of complaints received in the past five years combined and a jump of over 300% from 2015–2016.



The upward trend in the number of air travel complaints started in October, as the Agency's public information efforts ramped up and as the Government signalled its intention to introduce a new Air Passenger Rights Regime.



This increase is likely due primarily to increasing awareness of the Agency's services.

IMPROVEMENTS TO AIR TRAVEL COMPLAINTS SERVICES AND PROCESSES

Merci énormément de votre excellent travail. Je sais que ce que vous avez fait n'est pas facile, l'ayant tenté moi-même.

Merci beaucoup.

– Benoît Brunet-Poirier

As part of its ongoing process improvements, and to address the increased number of complaints, the Agency took concrete steps to make its air travel complaints process faster, simpler and easier to access.

In September 2016, the Agency simplified its online [air travel complaints form](#), making it significantly shorter and easier to fill out. Since then, about 50% of complaints have been submitted through mobile devices – a dramatic increase.

The Agency also made improvements to its processes for facilitated complaints to increase the efficiency and quality of service. For example, the Agency now responds to new applicants more quickly, requires less information to get a complaint started and has fewer employees handling the same complaint.

Agency staff now call clients more often to help them better understand how processes work and what type of outcome they can expect.

For adjudicated air travel complaints, the Agency has laid the groundwork for an accelerated process that will be launched in the spring of 2017. Through this Fast Track Process, cases that raise relatively straightforward matters will be processed within 30 days, using condensed timelines and requiring fewer submissions. The Fast Track Process will allow the Agency to handle a growing number of air travel complaints more efficiently and to render binding decisions on a range of matters that directly impact Canadians.

I want to thank you once again for your help and prompt services.

Thanks, Thanks and Thanks!

– Sherry Kielinen

SIGNIFICANT INCREASE IN CASES RESOLVED

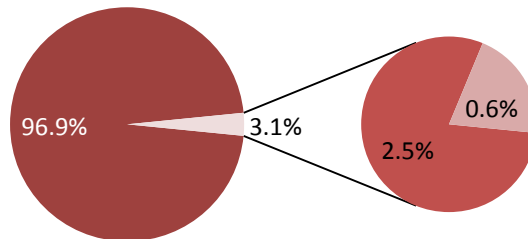
Of all 3,367 air travel complaints received this year, as well as 269 carried forward from the previous year, 2,195 were resolved in 2016–2017:

- 2,126 through facilitation
- 55 through mediation
- 14 through adjudication

Also, an additional 517 complaints were determined to be outside the Agency's mandate, and 40 were withdrawn.

How we processed complaints 2016-2017

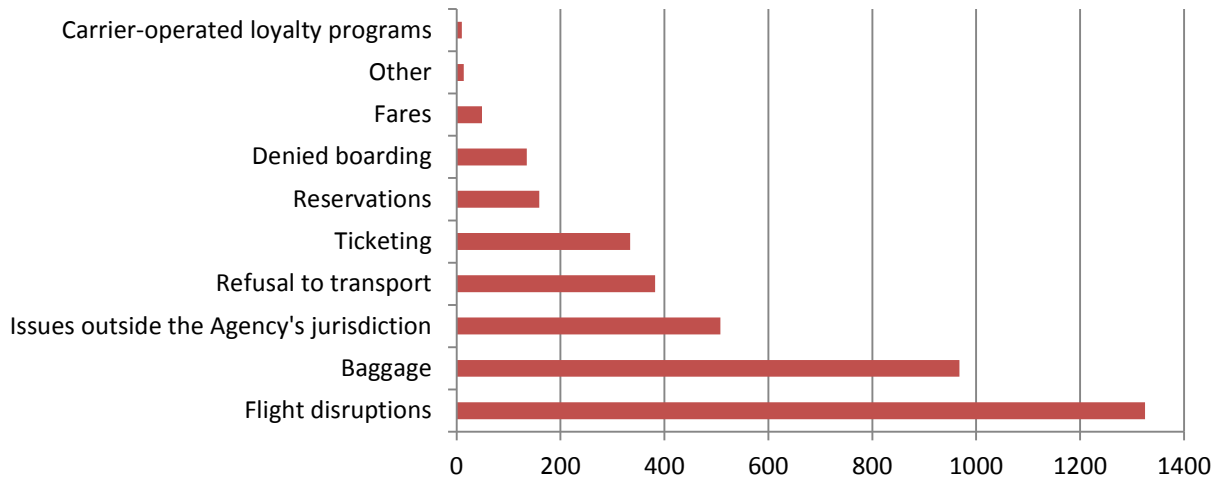
■ Informal - Facilitation ■ Informal - Mediation ■ Formal - Adjudication



COMPLAINT ISSUES AND TRENDS

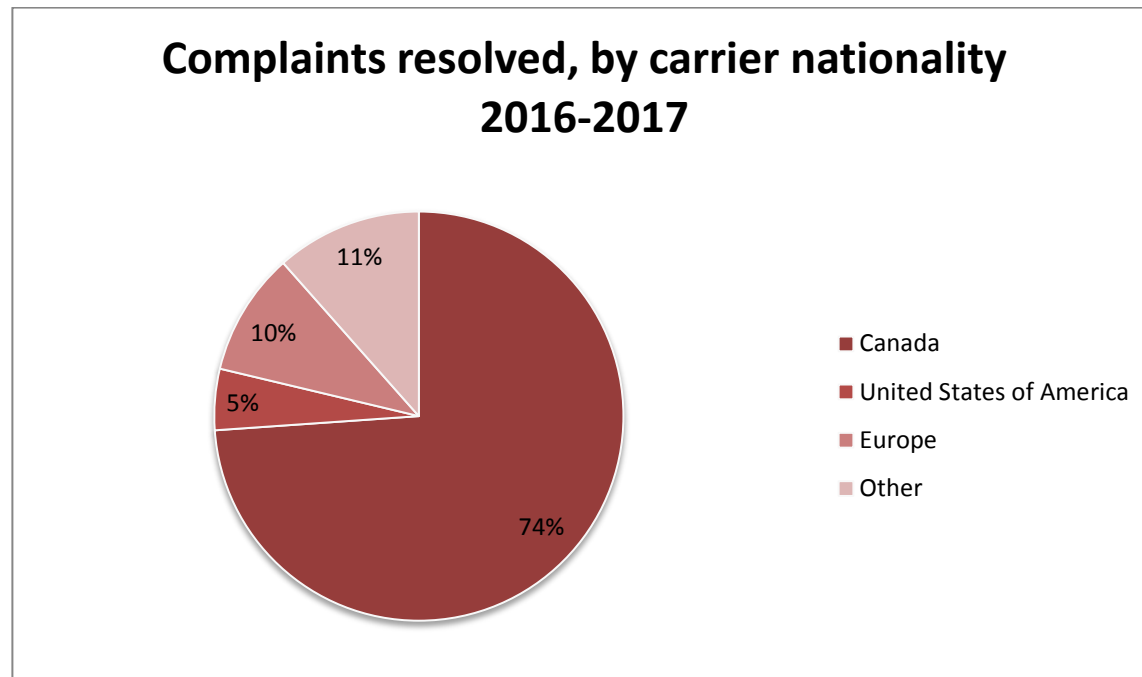
Of all issues within the Agency's mandate, complaints relating to flight disruptions have historically made up the bulk of the air travel complaints filed with the Agency. In 2016–2017, the trend remained the same – flight disruptions accounted for 40% of all issues raised in complaints processed, similar to previous years. Baggage handling complaints, which historically represented about 20% of all issues raised, rose to almost 30% this year. Refusal to transport and denied boarding comprise about 15% of all issues, and ticketing issues accounted for 9%, consistent with previous years' percentages.

Issues raised in air travel complaints 2016-2017



Note that, because one complaint may raise more than one issue, the total number of issues raised exceeds the total number of cases.

Over 70 air carriers were named in complaints in 2016–2017. Approximately three quarters of those complaints were related to Canadian carriers, a slight increase over the previous year. US air carriers accounted for around 5% of complaints, down from nearly 8% the year before. European carriers accounted for around 10% and the remaining 11% were against other foreign carriers.



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

THE BRITISH AIRWAYS DECISION

In December 2016, the Agency issued a decision in which it found that British Airways did not properly apply the terms and conditions set out in its tariff.

Three passengers travelling together filed a complaint concerning British Airways cancelling their tickets prior to their scheduled travel. As a result of the ticket cancellations, the passengers were forced to purchase replacement tickets and pay additional hotel accommodation. British Airways denied its liability for the expenses incurred by the passengers.

British Airways tariff states:

...the ticket is good for carriage from the airport at the place of departure to the airport at the place of destination via the route shown therein and for the applicable class of service and is valid for one year from the date of commencement of flight except as otherwise specified in Carrier's tariffs.

The Agency found that by not honoring the applicants' tickets, British Airways did not properly apply the terms and conditions set out in its tariff. The Agency ordered the carrier to compensate the passengers for the "out of pocket" expenses they incurred.

See the [British Airways decision](#)

THE AIR CHINA DECISION

In February 2017, the Agency issued a decision where it found that Air China did not properly apply the terms and conditions set out in its tariff.

A passenger filed a complaint about Air China's handling of a cancelled flight two months before the scheduled departure. Air China offered to reschedule the passenger on a flight departing either two days before or five days after the original date.

Air China's tariff states that it will either:

- (a) Carry the passenger on another of its passenger aircraft on which space is available; or
- (b) Endorse to another carrier or to any other transportation service the unused portion of the ticket for purposes of rerouting; or
- (c) Reroute the passenger to destination named on the ticket or applicable portion thereof by its own services or by other means of transportation; [...]

The Agency found "it reasonable that the replacement flight be on the same date as that of the cancelled flight" and that "Air China did not do everything in its power... to offer a confirmed flight with another carrier." The Agency therefore found that Air China did not properly apply the terms and conditions set out in its tariff. The Agency ordered Air China to compensate the passenger for expenses incurred for "previously confirmed reservations that were not honoured."

See the [Air China decision](#)

Statistics

Overview

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

Providing consumer protection for air passengers

- [Number and outcome of air travel complaints](#)
- [Number of 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. Based on recent administration of the Act, we have observations in six key areas:

1. [Recourse for travellers with disabilities](#)
2. [Own-motion authorities](#)
3. [General order powers](#)
4. [Expert reports and data](#)
5. [Codification of the Agency's function](#)
6. [Matters the Agency currently has limited or no ability to address](#)

1. 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 the 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, amongst other things, lost wages, pain and suffering, and wilful and reckless discrimination, which the Agency is not currently able to do.

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. While the CHRT's human rights mandate is of a general nature, the Agency has the unique, specialized expertise to balance the human rights of those with disabilities against the practical realities of the federal transportation network.

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.

2. 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, quasi-judicial tribunals and regulators often have broader own motion authorities, as does the Surface Transportation Board in the United States.

OBSERVATIONS

An extension of the Agency's own motion authority would allow for proactive initiative of inquiries where there are reasonable grounds exist 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.

Finally, assuming proposals based on the Government's Transportation 2030 and national accessibility initiatives are brought before Parliament, providing the Agency with a full implementation toolkit – including extension of its ability to undertake inquiries on its

own motion – could play an important part in achieving the policy objectives of any new or amended legislation.

3. 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.

OBSERVATIONS

The fact 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 of the Agency to issue orders across a group of service providers would complement existing processes, allow the Agency to craft remedies tailored to the circumstances, facilitate consistent and coherent approaches to broad-based matters, and -- as with own-motion authorities – help advance the policy goals of any new or amended legislation stemming from the Government's Transportation 2030 and national accessibility initiatives.

4. 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.

OBSERVATIONS

In some instances – including cases brought forward by persons with disabilities – applicants are unrepresented and unable to bear the burden of paying for expert reports needed to inform Agency decision making. 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 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 would be helpful to the Agency in discharging its responsibilities.

In Budget 2017, the government announced the planned establishment of a new Trade and Transportation Information System. The Agency looks forward to working with Transport Canada, Statistics Canada, and other partners on the development and implementation of the system.

Such a system has the potential to provide data that would support delivery of the Agency's statutory responsibilities. If the system's ultimate design does not achieve this goal, Parliament could consider giving the Agency the authority to obtain performance data held by carriers, and to require parties to a dispute adjudication to produce expert reports.

5. Codification of the Agency's functions

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.

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.

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.

6. Matters the Agency currently has limited or no ability to address

Canadian individuals or businesses have turned to the Agency for assistance in a number of areas where the Agency has had little or no authority to help them. These include issues related to:

- rent charged by ports to their tenants;
- fees charged by airports to airlines; and,
- railway lines that are not used by railway companies, but which those companies choose not to offer for sale through the statutory transfer and discontinuance process despite the stated interest of potential buyers.

OBSERVATIONS

The dynamics at play in some of these areas are analogous to those for matters where the Agency already has the ability to act; that is, they are frictions that can affect the efficiency of the national transportation system and the experiences of its users, and that may be exacerbated by a difference in bargaining power.

Parliament may wish to consider whether recourse mechanisms should be established for issues such as these, where such mechanisms do not currently exist.