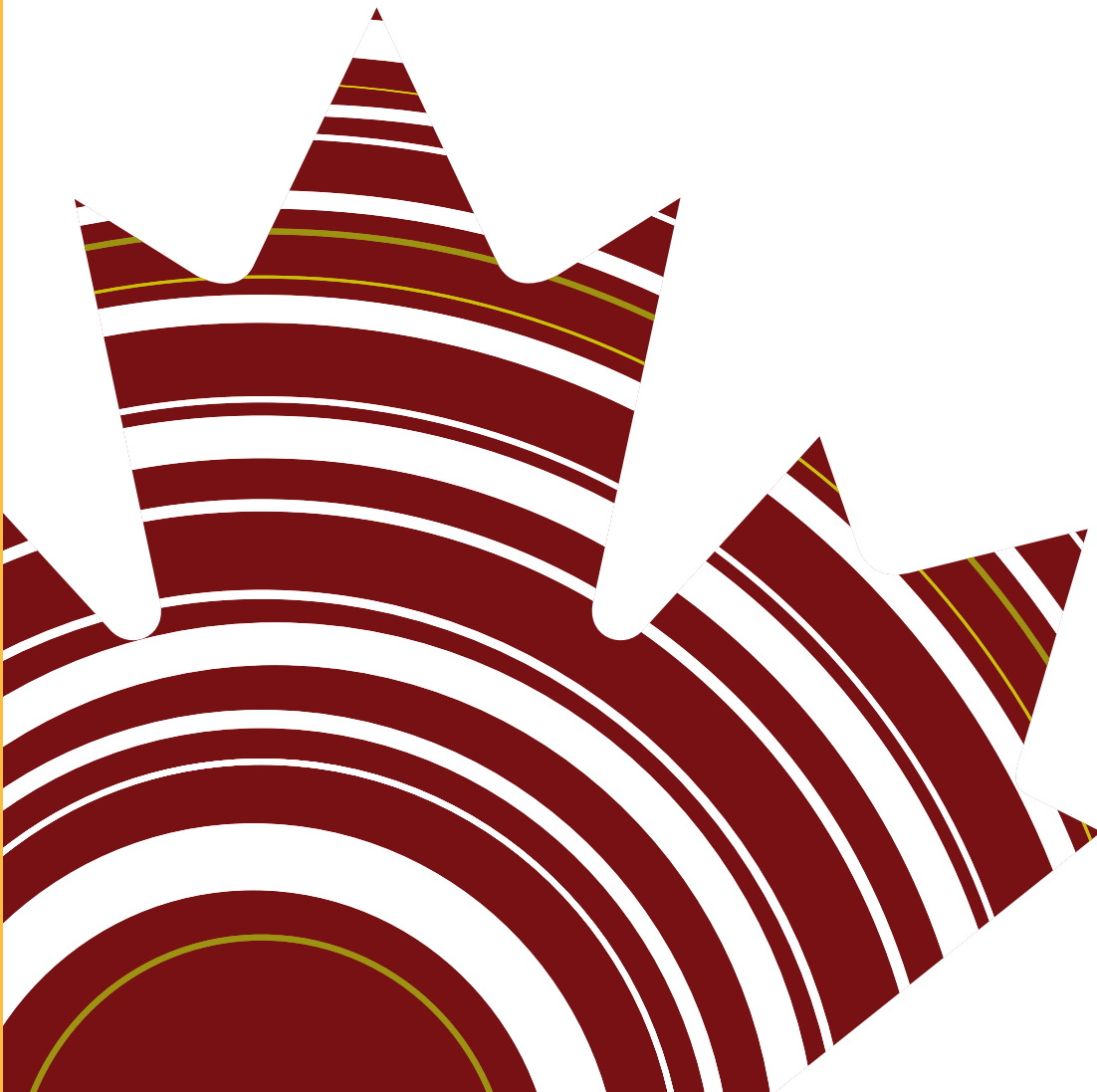




Canadian
Transportation
Agency

Office
des transports
du Canada

Annual Report 2018–2019



Canada 

Table of contents

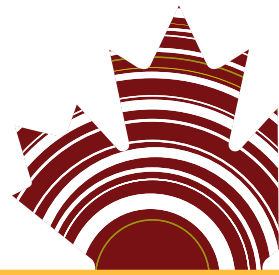
■ Annual Report 2018–2019.....	1
■ Message from the Chair and CEO.....	3
■ About the CTA	5
■ Transportation industry trends	7
■ Regulatory Modernization Initiative	13
■ Amendments to the <i>Canada Transportation Act</i>	18
■ Accessible Canada Act	24
■ Ensuring that the national transportation system runs smoothly and efficiently.....	25
■ Protecting the fundamental right of persons with disabilities to an accessible transportation network	33
■ Providing consumer protection for air passengers	37
■ Compliance Monitoring and Enforcement.....	45
■ Assessment of the Act	47
■ Appendix — Airlines against which complaints were filed during 2018–2019 ...	50

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Message from the Chair and CEO



During 2018–19, the Canadian Transportation Agency (CTA) was involved in major initiatives and changes, some resulting from its own decisions and efforts, and others from legislative amendments or developments in the transportation sector.

Among the most important was substantial progress on the CTA's Regulatory Modernization Initiative (RMI). Launched in 2016, the RMI is an ambitious project to review all regulations made and administered by the CTA, with the goal of ensuring that they keep pace with evolving business models, user expectations, and

best practices in the regulatory field. By March 2018, the CTA had published proposed regulations in all areas covered by the RMI.

The development of robust, balanced, and fair air passenger protection regulations (APPR) was of particular interest to the general public. The CTA began consultations on the APPR just days after legislative amendments giving us a specific mandate to set minimum airline obligations towards passengers came into force. During an intensive three-month consultation period, the CTA received 31,000 visits to our dedicated consultation website, and thousands filled in questionnaires and surveys, sent in comments, and filed formal submissions. The APPR are accompanied by updated air transportation regulations, which reduce administrative burdens for airlines around established industry practices like code sharing and aircraft leasing.

The significance of consumer protection for the travelling public was also evident in the continued rise in the number of air travel complaints filed with the CTA, which numbered 7,650 in 2018-19 – 9 times more than the figure just four years ago. We resolve 99 percent of complaints through informal facilitation and mediation services, and through proceedings that examine multiple complaints together, such as our own motion inquiry into Sunwing flight disruptions in Toronto and Montreal between April 14 and 18, 2018.

At the same time, the CTA focused significant attention on accessibility. Our vision is nothing less than a national transportation system that is the most accessible in the world. In 2018-19, we took important steps towards making this vision a reality, including wide-ranging consultations with disability rights groups and industry representatives, the development of proposed Accessible Transportation for Persons with Disabilities Regulations, the organization of multi-stakeholder discussions on the transportation of mobility aids on aircraft, and preparations for the possible passage of the proposed Accessible Canada Act.

Finally, the CTA invested substantial effort in designing and implementing new processes and tools for freight rail matters, following a suite of legislative amendments in the area. For example, we drafted updated rail-related regulations and Rules for handling long-haul interswitching applications, established a Railway, Rail Shipper and Community Help Line to provide information, guidance and dispute resolution services on the rail-related provisions of the Act to shippers, communities, members of the public, and railway companies, and applied new methodologies to the setting of interswitching rates and the maximum revenue entitlement. And notably, in January 2019, we made our first use of a new authority to initiate inquiries on possible freight rail service issues on our own motion, with the authorization of the Minister of Transport.

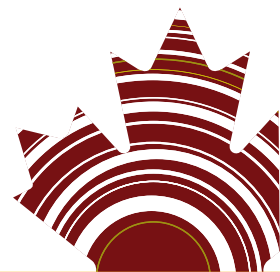
The fact that we were able to accomplish so much is a tribute to the hard work, expertise, and professionalism of the CTA's 270 public servants and its seven full-time and temporary Members. In 2018–19, Members Stephen Campbell and Paul Fitzgerald completed their terms, and six new Members were appointed: Liz Barker as Vice Chair; Mark MacKeigan, Heather Smith, and Mary Tobin Oates as full-time Members; and Lenore Duff and Gerald Dickie as part-time Members. The new slate of Members brings an excellent mix of experience and skills to their roles, and all are grateful for the sound advice and dedicated support of the CTA's employees.

Together, we are committed to helping to ensure, in the interest of all Canadians, that the national transportation system is as efficient and accessible as possible during these times of change.



Scott Streiner

Chair and Chief Executive Officer



About the CTA

The Canadian Transportation Agency (CTA) is an independent, quasi-judicial tribunal and regulator that has, with respect to all matters necessary for the exercise of its jurisdiction, all the powers of a superior court.

The CTA oversees the very large and complex [Canadian transportation system](#), which is essential to the economic and social well-being of Canadians.

The CTA's decision-makers are regular [Members](#) appointed by the Governor-in-Council (GIC) and temporary Members appointed by the Minister of Transport from a GIC-approved roster. Members' key functions include making adjudicative rulings, regulations, and regulatory determinations, as well as designating CTA staff to exercise the role of enforcement officers.

"We help ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians"

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.

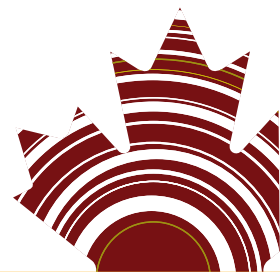
- **Dispute resolution:**

We resolve disputes that arise between transportation service providers and their clients or neighbours, 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 CTA's legislation and services.

Transportation industry trends



Canada's vast land mass, widely dispersed population, and reliance on global trade require a highly efficient, accessible transportation system to connect people and facilitate economic activity. The CTA tracks trends in the transportation industry to support its consultations with, and reports to, stakeholders and the public, as well as to inform its various activities as an independent regulator and tribunal.

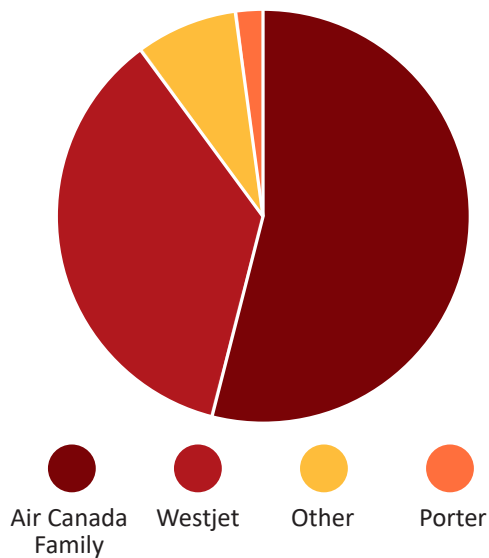
Air sector

The domestic air sector in Canada is dominated by two major carriers: Air Canada and WestJet, which account for 90% of total scheduled domestic seat-kilometres. A variety of other regional, leisure, and local carriers make up the remaining 10%.

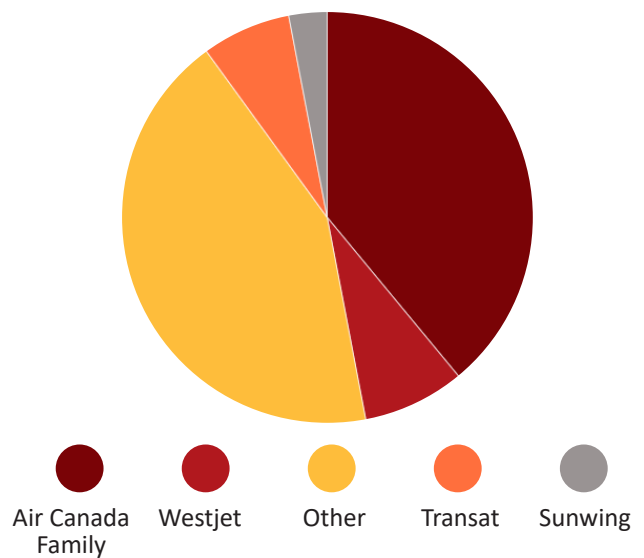
Developments in the Air Sector

- WestJet and Air Canada, Canada's two largest carriers, increased their revenue passenger miles (RPMs) by 8.5% and 6.5% respectively in 2018, resulting in nearly 120 billion RPM.
- Low-cost carriers such as Flair and Swoop are also operating in Canada. They offer stripped-down base fares with a suite of for-purchase services, such as checked baggage, seat selection and priority boarding.

Market shares based on 2018
scheduled available seat-miles
(domestic)

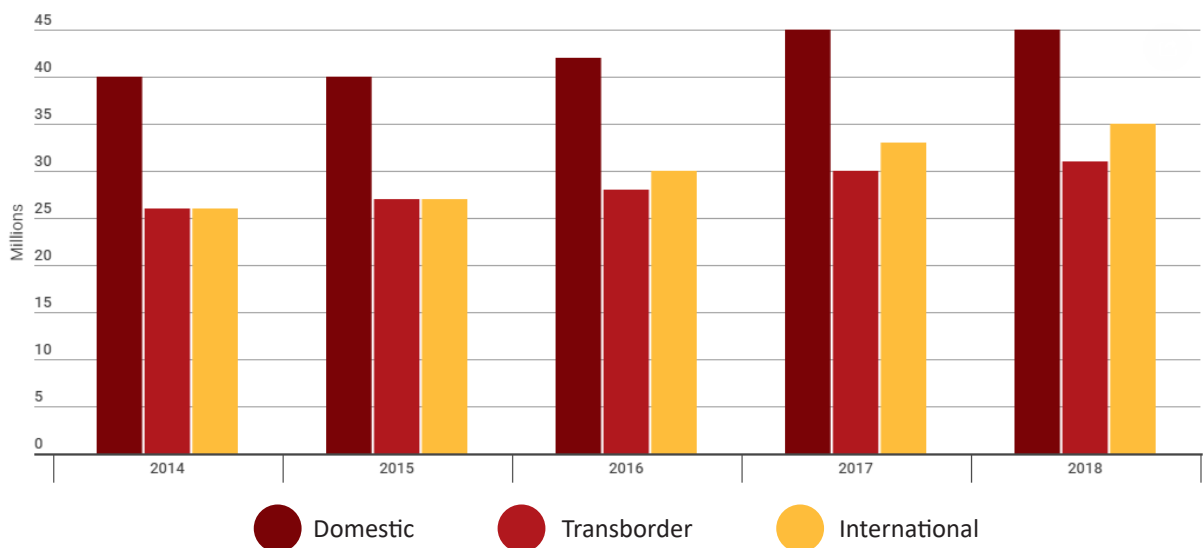


Market shares based on 2018
scheduled available seat-miles
(canadian international traffic)



In 2018, level I and II Canadian air carriers, earned over \$26.4 billion in operating revenues, an increase of 9.7%. Operating expenses increased 13.9% to \$24.9 billion resulting in an operating income to \$1.6 billion, a decrease of a 31.1%.

Over the past five years, the number of enplaned and deplaned passengers on domestic, transborder, and international flights have all increased. In 2018, passenger traffic rose by 2.9% from 2017.



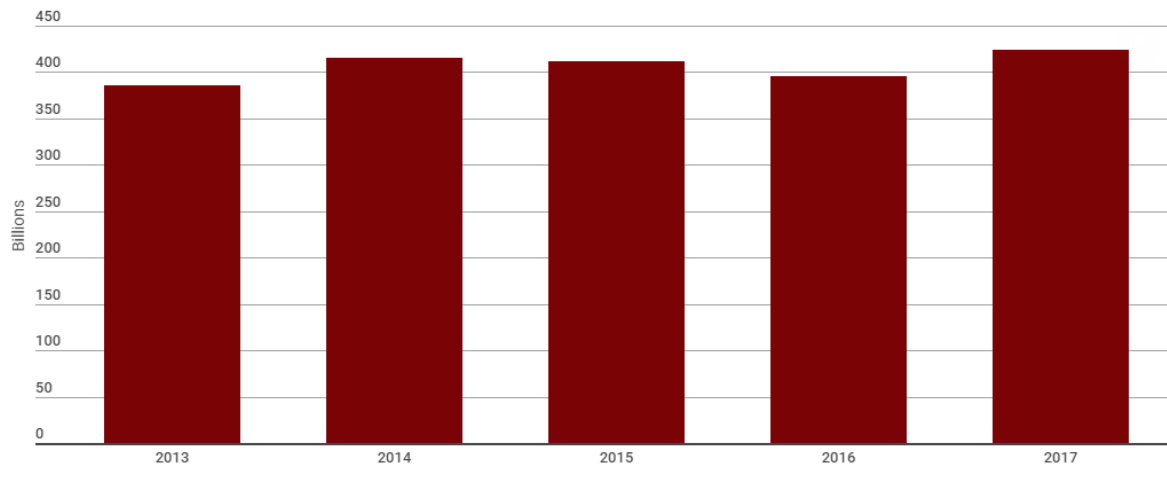
Rail Sector

Canada's freight rail sector is made up of two large carriers operating mainlines, CN and CP, and several shortline railway companies that operate many of the branch lines feeding into the mainline rail network.

Revenue tonne-kilometres generated by Canadian freight railways increased by 6.6% between 2016 and 2017. [Class I railway companies](#) accounted for 97% of all revenue tonne-kilometres in 2017.

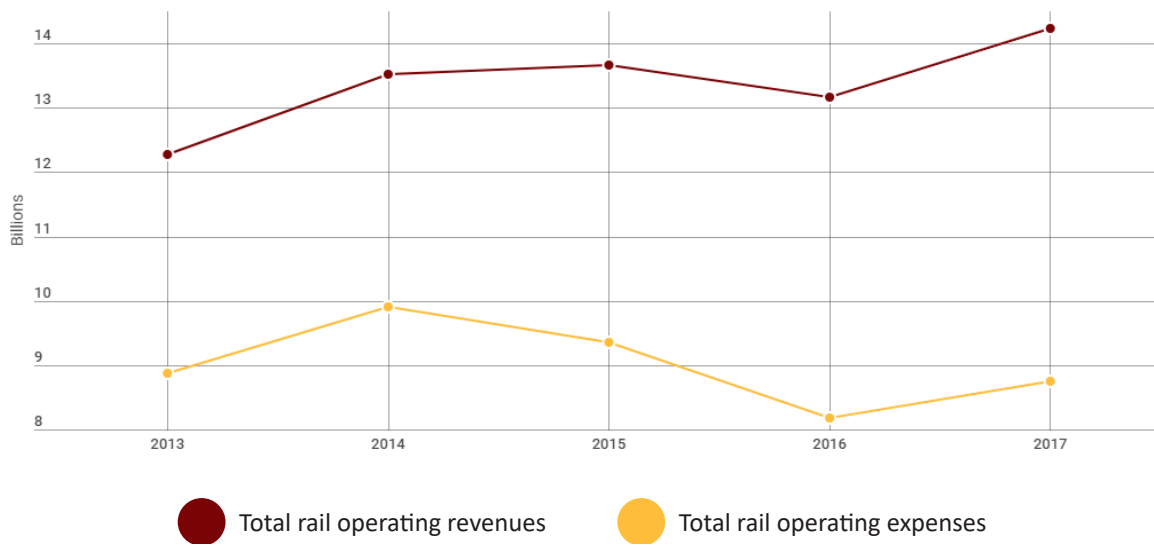
Developments in the Rail Sector

- Following changes to the *Canada Transportation Act*, which allow CN and CP to recover the costs of acquiring and maintaining new hopper cars in the formula used to calculate their Maximum Revenue Entitlement, both railway companies announced investments in hopper cars.
- The 2018–2019 western grain crop was estimated to be over 71 million tonnes. This marks the third straight year that Western Canadian Grain production has exceeded 70 million tonnes.
- Beginning in November 2018, the *Canada Transportation Act* required Class I railway companies to report [weekly performance metrics](#).



Total operating revenues for Canadian mainline railway companies, which includes CN, CP, and VIA Rail, increased 8% to \$14.2 billion in 2017, while operating expenses increased 7% to \$8.7 billion resulting in a 10% increase in net rail operating income to \$5.5 billion.

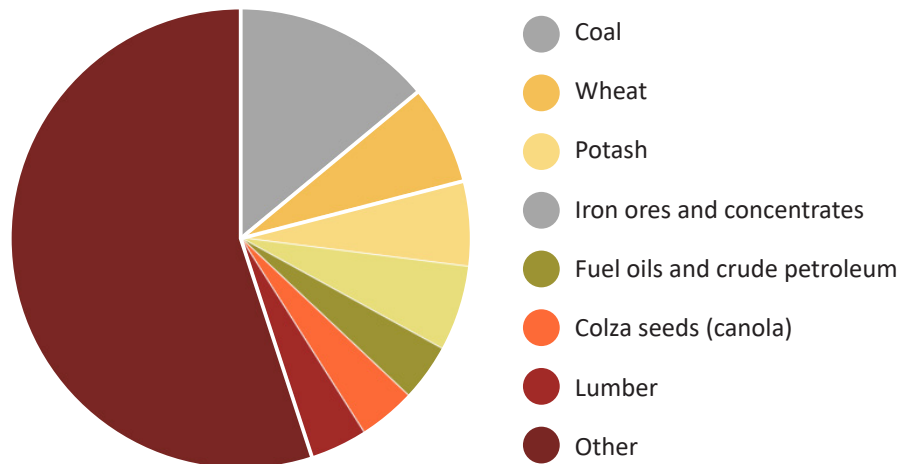
Operating revenues and expenses, mainline railway companies (billions of dollars)



The financial community measures the efficiency of a railway company on the basis of its operating ratios, which is the ratio of operating expenses to operating revenues. Generally, a lower operating ratio indicates a more efficient use of railway resources. CN and CP's operating ratios for their North American operations were 61.5% and 61.3% respectively.

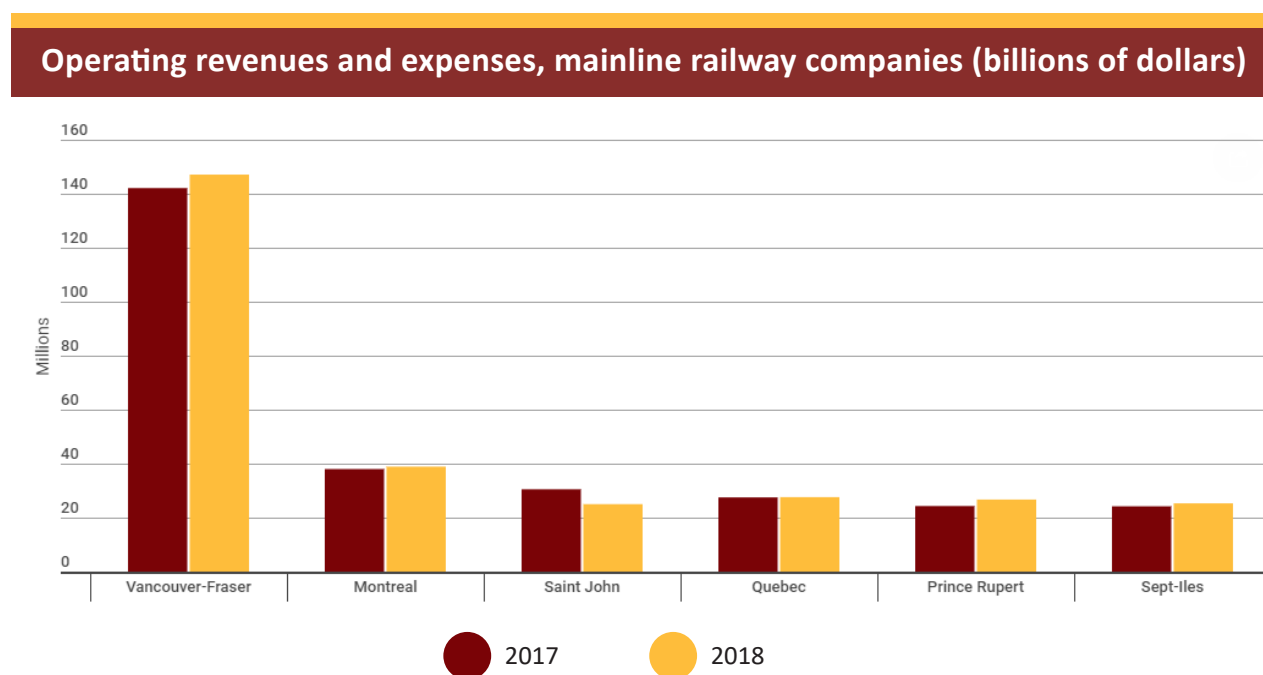
Shippers of many commodities rely on rail to move their products to market. Seven commodity groups make up around 45% of annual rail shipments, by tonnes. The remaining 55% of shipments are made up mainly of various raw primary resources such as metals, mineral ores and grains, and finished products such as automobiles.

Operating revenues and expenses, mainline railway companies (billions of dollars)



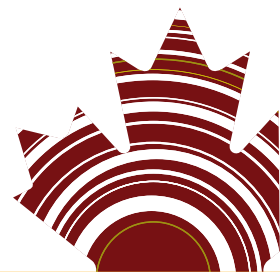
Marine Sector

The marine sector plays an important role in linking Canada to its trading partners around the world. The major ports in Canada are well-integrated with the rail network, allowing shippers thousands of kilometres away from a major port to access foreign markets. Eighteen Canadian Port Authorities handled 342.1 million tonnes of cargo in 2018, an increase of 2.1% over 2017. Nearly 43% of that volume went through the facilities of the Vancouver Fraser Port Authority.



In 2018, Canadian-flagged vessels carried the majority of domestic coasting trade traffic through Canada's port system. A total of 31.5 million tonnes moved through the St. Lawrence Seaway, more than one-quarter of which was grain traffic.

Regulatory Modernization Initiative



The Regulatory Modernization Initiative (RMI) was launched in 2016 to ensure that the full suite of regulations made and administered by the CTA kept pace with evolving business models, user expectations, and best practices. RMI consultations were divided into four phases: accessible transportation, air transportation, consumer protection for air passengers, and rail transportation. Modernized regulations will:

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

During 2018–2019, we completed all consultations and drafted regulations for all phases of the RMI.

Phase 1:

Accessible Transportation

The first phase of RMI focuses on regulations that help ensure an accessible federal transportation network for persons with disabilities.

The CTA has consulted extensively with its [Accessibility Advisory Committee](#), which includes disability rights organizations and transportation industry representatives; other disability community groups and industry players; and the general public, including travelers with disabilities. Since these consultations began in 2016, we have received over 200 submissions and had over 40 face-to-face meetings. Key input is summarized in our [What We Heard Summary Report on Accessible Transportation](#).

In 2018–2019, consultations included providing the Accessibility Advisory Committee a summary of proposed regulatory directions, an innovative approach to consultation that had a significant impact on the new proposed regulations.

The CTA consolidated its various accessibility instruments — six voluntary codes of practice and two regulations — into a single, robust set of draft *Accessible Transportation for Persons with Disabilities Regulations*.

These proposed regulations would apply to all modes of transport under our jurisdiction — air, and interprovincial or international passenger rail, bus, and ferry services — as well as the Canadian Air Transport Security Authority and the Canada Border Services Agency.

The proposed regulations would cover a broad range of requirements related to communications, training, service requirements, and technical requirements. Service requirements address topics such as service dogs, allergies, the “One-Person-One-Fare” principle, and curbside assistance at terminals.

Unlike the voluntary codes of practice, the proposed regulations would be legally binding on transportation service providers and enforceable through administrative monetary penalties.

On March 9, 2019, we published the proposed regulations in Part I of the *Canada Gazette* for a 30-day comment period. We expect to publish the final regulations in Part II of the *Canada Gazette* by summer 2019.

As a separate but related initiative to RMI Phase I, the CTA is preparing for the potential passage of Bill C-81, the *Accessible Canada Act*. If passed, this Act would give the CTA new roles and responsibilities related to accessibility. Bill C-81 is discussed later in this report.

Phase 2:

Air Transportation

The second phase of RMI aims to update and clarify the Air Transportation Regulations to reflect changes in the domestic and international aviation industry and remove unnecessary administrative burdens. This includes adjusting the minimum levels of insurance for inflation, amending charter provisions to better reflect market realities, clarifying code-sharing and wet-leasing, and reducing regulatory burden on licensed operators.

The CTA consulted with industry stakeholders, experts and members of the public between December 2016 and October 2017. Their comments, suggestions, ideas and proposals were summarized in a [What We Heard Summary Report on Accessible Transportation](#).

The CTA published the [proposed Air Transportation regulations, Part I](#) in the Canada Gazette on December 22, 2018 for a 60-day comment period. We expect to publish the final revised regulations in Part II of the *Canada Gazette* in spring 2019.

Phase 3:

Consumer protection for air passengers

The third phase of the RMI is focused on developing new *Air Passenger Protection Regulations*. This phase gained momentum with the coming-into-force, in May 2018, of legislative amendments giving the CTA a specific mandate to make regulations establishing airlines' minimum obligations toward passengers. The regulations will set out an airline's obligations toward passengers with respect to clear communication, delayed or cancelled flights, denied boarding, tarmac delays, the seating of children

under the age of 14, damaged or lost baggage, and the transportation of musical instruments. These regulations will ensure clearer, more consistent passenger rights by establishing minimum requirements, standards of treatment, and in some situations minimum levels of compensation that all air carriers must provide to passengers.

The CTA consulted broadly for three months with the travelling public, consumer rights groups, and the airline industry about the proposed regulations. Our dedicated consultation website received approximately 31,000 visits; almost 5,000 people completed on-line questionnaires; about 500 people uploaded comments; 900 randomly selected travellers were surveyed at 11 airports; 200 people attended in-person consultation sessions in 8 cities across the country as well as a call-in session; 39 in-depth consultation meetings were held with stakeholders and experts; and 104 formal written submissions were received.

That feedback, and a summary [*What We Heard Report on Air Passenger Protection Regulations*](#), are posted on the CTA website.

The [*proposed Air Passenger Protection regulations*](#) were published in Part I of the *Canada Gazette* for a 60-day comment period. We expect to publish the final regulations in Part II of the *Canada Gazette* in spring 2019.

Phase 4:

Rail Regulations

The rail phase of the RMI is focused on updating rail-related regulations and guidance materials and implementing new freight rail measures incorporated into the *Canada Transportation Act* in May 2018. This phase covers the following key issues:

- Amendments to the Railway Interswitching Regulations;
- Insurance filing for freight rail operations;
- Insurance requirements for passenger rail operations and railway construction;
- Administrative monetary penalties; and

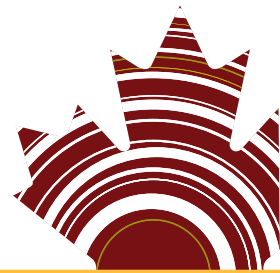
Guidance materials on shipper remedies and recovery of costs related to a railway fire.

We launched this phase with a four-month consultation process. It included 20 formal bilateral meetings with representatives from passenger and freight railway companies, rail tourism operators, industry associations, shipper associations, associations representing logistics and freight management, private companies that are users of rail, and other industry experts. In addition, we received 26 written submissions from stakeholders.

The CTA's [*What We Heard Report on Rail Transportation*](#) summarizes the input we received about how best to update and clarify the existing regulations, guidelines, and tools.

We published the resulting proposed regulations in Part I of the *Canada Gazette* on March 30, 2019 for a 30-day public review and comment period. We expect to publish the final regulations in Part II of the *Canada Gazette* by summer 2019.

Amendments to the *Canada Transportation Act*



The *Transportation Modernization Act* (Bill C-49) which came into force on May 23, 2018, amended the *Canada Transportation Act* (Act) to introduce new measures related to freight rail, air transportation, and air passenger protection. It also gave the CTA new responsibilities related to shipper remedies and the publication of information on the performance of the freight rail system. Our work in 2018 to respond to and implement the new amendments in 2019 — beyond some of the related regulatory modernization efforts noted in the preceding section — is outlined below.

Freight rail

Regulated (30 km) interswitching rates

The amended Act enables the CTA to set the interswitching rate annually. We published a new rate for 2019, and an explanation of the methodology we used to calculate the rate in November 2018.

Details can be found under “*Interswitching Rates Determination*” section of this report.

Long-haul interswitching

New Long-Haul Interswitching provisions allow certain shippers to apply to the CTA for a rate and terms under which their local railway must move their goods to a connecting railway that will transport the goods to their final destination. Certain conditions apply. The CTA must render a decision within 30 business days.

No Long-Haul Interswitching applications were filed with the CTA during the 2018-2019 year. We published initial guidance material that will be revised to make it more “plain language” and to cover more topics in 2019-2020.

Maximum revenue entitlement (MRE)

The amended Act changes the way the CTA calculates the MRE, which is a statutory limit on the overall revenue that can be earned by the Canadian National Railway Company (CN) and the Canadian Pacific Railway Company (CP) for the volume of eligible grain that they move in the crop year.

The amendments require the CTA to establish a distinct volume-related composite price index (VRCPI — essentially an inflation index used in determining the MRE) for each of CN and CP that also recognizes investments in grain hopper cars. The amendments also introduced changes to exclude containerized traffic and to include soybean traffic in determining CN's and CP's revenues that are subject to the MRE.

The CTA re-determined CN's and CP's VRCPI for the 2018-2019 crop year in October 2018, in accordance with the new rules.

Level of service dispute adjudication

The amended Act identifies factors that the CTA should consider — which are consistent with, and elaborate on principles that have been developed through case law — when determining whether a railway company provided a shipper the highest level of service that it reasonably could. These factors include the traffic, the service requested, and the railway company's operational requirements.

The amendments also reduce the timeline for resolving level of service applications to 90 days from 120 days.

We received one rail level of service application in 2018–2019.

Own motion level of service investigation

Under the amended Act, the CTA can, with the authorization of the Minister of Transport, launch an investigation on its own motion into possible freight rail level of service issues. The investigation should be completed within 90 days, and can result in an order.

We exercised this new authority once in 2018-2019. Details can be found under *“Vancouver Freight Rail Service Investigation”* section of this report.

Rate arbitration

A shipper can request that the CTA appoint an arbitrator to resolve disputes between carriers and shippers pertaining to rates, and the terms and conditions associated with that rate. Each party submits their final offers for a decision. The process is confidential and the arbitrator's decision is enforceable as if it were an order of the CTA.

Two aspects of Final Offer Arbitration (FOA) changed as a result of amendments to the Act:

- the shipper can request the FOA decision to apply for two years, instead of one; and

the threshold for summary FOA has increased to \$2 million. This means that if the CTA determines that a shipper's final offer involves freight charges of not more than \$2 million, an expedited FOA process will apply, unless the shipper requests otherwise.

In 2018–2019, the CTA referred six cases for final offer arbitration.

Rail information

The amended Act mandates that the CTA provide information on freight rail transportation and remedies, including guidance to anyone who may wish to access those remedies.

To this end, we have established a Rail Help Line that anyone may call to obtain information, guidance, and dispute resolution services relating to the rail provisions of the Act. This includes information about regulated railway operations and infrastructure, as well as shipper and community rights and obligations.

By the end of 2018–2019, the CTA had fielded 94 calls on issues within its jurisdiction.

We were already posting general information on our website, and continue to do so. We have recently launched a project to produce more guides for stakeholders in plain language.

Rail service and performance data

Class 1 railway companies are required by the amended Act to submit rail service and performance data. Statistics Canada is now regularly publishing key indicators, which the CTA uses in its analytical and decision-making work as needed.

Air transportation

Canadian ownership and control in fact

The 2018 amendments to the Canada Transportation Act also included significant changes to the definition of “Canadian” as prescribed in subsection 55(1). The new definition of Canadian allows non-Canadians to hold up to 49% of Canadian air carriers, up from 25%.

Following the coming into force of the amended CTA on June 29, 2018, the CTA published an updated version of its guidance material on Canadian ownership and control in fact determination process.

To be considered Canadian, as defined by subsection 55(1) of the Act, new applicants and existing licensees must meet the following criteria:

- a Canadian citizen or a permanent resident;
- a government in Canada or an agent or mandatary of such a government; or
- a corporation or entity that:
 - Must be incorporated or formed under the laws of Canada or a province;
 - At least 51% of its voting interests must be owned and controlled by Canadians;
 - No single non-Canadian owns or controls, directly or indirectly, more than 25% of the voting interests in that corporation (either individually or in affiliation with another person). In addition, no more than 25% of the voting interests in a Canadian carrier are owned by non-Canadians air carriers (either individually or in affiliation); and
 - Must be controlled in fact by Canadians.

Between April 1, 2018 and March 31, 2019, we examined 12 requests to increase the percentage of ownership held by non-Canadians in Canadian air carriers. Details can be found under “*Air Licensing Activities*” on pages 22-23 of this report.

Joint ventures

Applicants and licensees who enter into arrangements or joint ventures with non-Canadian air carriers should carefully consider whether this could result in joint or entire control by the non-Canadian. Such arrangements typically involve collaboration or strategic business decisions around matters such as:

- prices,
- routes,
- schedules,
- capacity,
- ancillary services, and
- revenue and cost sharing.

The Canadian licensee must always be in a position to control its decision-making. It must be free of any dominant and determining influence from the non-Canadians participating in the joint venture. Otherwise, the non-Canadian could be found to be in a position of control, thereby resulting in the Canadian licensee no longer complying with the requirement to be Canadian.

Air Passenger Protection

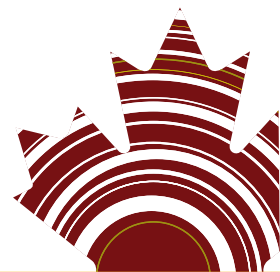
The amended Act gives the CTA the authority to make regulations defining airlines' minimum obligations to passengers with respect to:

communication with passengers about their rights and recourse options;

- denied boarding;
- flight delays and cancellations;
- tarmac delays of three hours or more, including the obligation to provide timely information and assistance to passengers;
- lost or damaged baggage;
- seating of children under age 14; and
- development of terms and conditions of carriage on the transportation of musical instruments.

We are currently finalizing proposed regulations in this area, as outlined earlier in the Regulatory Modernization Initiative section of this report.

Accessible Canada Act



In June 2018, Bill C-81, the [Accessible Canada Act: An Act to Ensure a Barrier-free Canada](#) was introduced in the House of Commons. The stated purpose of this bill is to benefit Canadians, especially Canadians with disabilities, by proactively identifying, removing, and preventing barriers to accessibility wherever Canadians interact with areas under federal jurisdiction. This includes the federal transportation sector.

By the end of 2018-2019, Bill C-81 was being considered by the Senate, having been adopted unanimously by the House at Third Reading. If and when it comes into force, Bill C-81 will give the CTA new tools for ensuring the accessibility of the national transportation system. These include:

- the ability to initiate investigations with the approval of the Minister of Transport, regardless of whether a formal complaint has been made;
- new monitoring and enforcement tools that would help to ensure that federal transportation service providers are complying with their regulatory obligations, including the possibility of issuing a warning and/or entering into a compliance agreement;
- the ability to order compensation for pain and suffering, as well as expenses incurred, in cases involving the accessibility of the federal transportation network;
- higher maximum administrative monetary penalties, for a transportation service provider's non-compliance with accessibility related requirements, of up to \$250,000 depending on the nature and severity of non-compliance; and
- the authority to set up a participant funding program to help people with disabilities participate in hearings during CTA inquiries.

We are getting ready for the potential adoption of this Bill. This includes collaborating closely with the other federal organizations responsible for investigating and resolving accessibility-related complaints to ensure we have well-aligned approaches and that there is “no wrong door” for persons with disabilities who want to submit complaints.

Ensuring that the national transportation system runs smoothly and efficiently



The CTA'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 the Canadians who work and invest in it; the producers, shippers, travellers and businesses who rely on it; the communities where it operates — and the prosperity and social fabric of the country as a whole.

For example, the CTA:

- administers an air licensing and charter permit regime;
- issues certificates of fitness for federal railway companies and enforces compliance with minimum insurance requirements;
- determines railway costs, approves railway line construction, oversees the discontinuance of service, and establishes the net salvage value of railway lines;
- determines rail 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 railway companies and individuals or communities affected by railway noise and vibration; and
- determines whether suitable Canadian vessels are available when coasting trade licence applications are made to use foreign vessels.

Highlights from 2018–2019

Air licensing activities

The CTA issues licences to Canadian air carriers to operate air services within Canada. We also license Canadian and foreign air carriers to operate scheduled or non-scheduled international air services to and from Canada.

In 2018–2019, we issued new licences for scheduled international services between Canada and the following countries:

Canadian Airlines	Country
Cargojet	Mexico, Peru
Swoop	Jamaica, Mexico, United States of America
WestJet	Algeria, Australia, Brazil, Chile, Colombia, Egypt, India, Israel, Morocco, Peru, Thailand, Tunisia, Vietnam

In 2018–2019, we issued 44 licences to Canadian air carriers; 20 of those licence applications required us to determine whether Canadian ownership requirements were being met.

In total, we issued 90 new licences to Canadian and foreign air carriers.

Bilateral air transport agreements

The CTA 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. We contribute subject matter expertise with respect to Canadian legislative and regulatory requirements, given our role as a designated aeronautical authority for Canada.

In 2018–2019, we participated in negotiations resulting in new air transport agreements with:

- St. Vincent and the Grenadines;
- Mongolia; and
- the United Kingdom.

We also participated in negotiations that expanded Canada’s existing air transport agreements with:

- Algeria;
- Cote d’Ivoire;
- Egypt;
- Haiti;
- Jordan;
- Qatar;
- Tunisia; and
- the United Arab Emirates.

Maximum revenue entitlement (MRE) program for transporting western grain by rail

Each year, the CTA 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 2018, the CTA ruled that CN and CP exceeded their maximum revenue entitlements for the 2017-2018 crop year.

Company	Entitlement	Grain revenue	Amount above (\$)
CN	\$787,014,793	\$788,062,078	+\$1,047,285
CP	\$707,998,903	\$709,499,416	+\$1,500,513

As provided for in the regulations, CN and CP were required to pay, within 30 days of the determination, the amount by which they exceeded their 2017–2018 maximum revenue entitlements, as well as a 5% penalty of \$52,364 for CN and \$75,026 for CP, to the Western Grains Research Foundation, a farmer-financed and directed organization set up to fund research that benefits Prairie farmers.

Interswitching rate determination

On November 30, 2018, the CTA issued Determination No. R-2018-254 on regulated interswitching rates for 2019. This was our first determination of the rates under the new amendments to the Act, which require us to:

- determine the interswitching rates no later than December 1 of every year and to take into consideration any long-term investment needed in the railways;
- publish the method that we followed for determining the rate; and
- publish the interswitching rate in the Canada Gazette no later than December 31 before the beginning of the calendar year for which the rate applies.

We published the methodology used to calculate the 2019 interswitching rates, as well as an explanation of how we considered the long-term investment needed in the railways. We published the 2019 rates in the Canada Gazette on December 29, 2018.

This is the first step towards an updated approach to calculating interswitching rates. We will be launching consultations on this issue later in 2019.

Dispute resolution — Rail

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

35 rail disputes were resolved in 2018–2019:

- 15 through facilitation,
- 7 through mediation,
- 9 through adjudication, and
- 5 through arbitration.

The CTA administers two distinct arbitration processes for disputes between freight railway companies and shippers: one for level of service disputes and one for rate disputes.

Shippers can initiate level of service arbitration to get a service contract if they have been unsuccessful negotiating a contract with the railway company. This arbitration focuses on resolving such issues as the quantity of cars to be delivered and the timing of their delivery; loading and transit times; and communication protocols. The CTA appoints an arbitrator who has up to 65 days to establish a contract, which is valid for one year. The arbitrator may combine terms and conditions proposed by both parties, or choose alternative terms and conditions.

Rate arbitration can be triggered by shippers to settle disputes about rates charged by a freight railway company for the movement of goods. For this type of arbitration, the parties choose an independent arbitrator from a roster established by the CTA. If the parties cannot agree on an arbitrator, the CTA will appoint one.

Rate arbitrations use the final offer selection model, where the arbitrator chooses either the rate proposal made by the shipper or the rate proposal made by the railway

company. The timeline for doing so is 60 days for a regular process and 30 days for a summary process, which only applies to rates for traffic below a prescribed level. The arbitrated rate applies for either one or two years, whichever the shipper chooses.

In 2018–2019, the CTA referred six cases for final offer arbitration.

Cambridge v. CP

The Corporation of the City of Cambridge and the Corporation of the City of Kitchener (Cambridge) filed an application concerning the construction of a road crossing. Cambridge was seeking the CTA’s authorization of an at-grade road crossing, and an order for the apportionment of costs for the construction, alteration, operation, or maintenance of the crossing. CP did not oppose the crossing; however, it argued that a suitable crossing would be grade separated.

In its determination of what constituted a suitable crossing, the CTA considered the present-day needs and cross-product numbers, safety and the intended use of the crossing. The CTA authorized the construction of the crossing and ruled that a grade separation is the most suitable crossing for that location. The CTA apportioned the costs of construction equally between Cambridge and CP. CP sought leave to appeal the CTA’s decision from the Federal Court of Appeal.

Paterson Grain v. CN and BNSF

Paterson Grain filed an application for regulated and extended interswitching with respect to its Morris Terminal facility located in Manitoba. Paterson requested that its Morris Terminal facility be determined “reasonably close” to the CN and BNSF Emerson Interchange and that CN and BNSF be required to provide reasonable facilities for convenient interswitching at the rates prescribed in the *Railway Interswitching Regulations*, SOR/88-41.

In its determination of whether a point of origin or destination of a movement of traffic is “reasonably close” to an interchange, in previous decisions the CTA considered the distance between the terminal and the interchange, the level of service (car supply, service and rates) provided to the shipper by the railway company, and the shipper’s position relative to competitors. Of those three factors, the CTA found that the most pertinent is distance. The primary consideration is radial distance; track distance will be considered where it is substantially longer than the radial distance. In the specific

circumstances of each application, service issues and competitive position may be considered by the CTA. These will not be given the same weight as distance.

The CTA ruled that the Morris Terminal facility is reasonably close to the Emerson Interchange and therefore within the interswitching limits of the Emerson Interchange. The CTA ordered CN and BNSF to interswitch Paterson's traffic at the Emerson Interchange at the prescribed rates in the Regulations.

“Un petit message pour vous informer que j'ai reçu aujourd'hui un nouveau paiement de 1200€, ce qui complète entièrement l'indemnisation des deux annulations tel que vous l'aviez négocié.

En vous remerciant une nouvelle fois pour votre excellent travail et votre soutien.

Bien cordialement,”

– Éric Beaulieu

Vancouver freight rail service issues

On January 14, 2019, the CTA announced it was using its own-motion powers to initiate an investigation into possible freight rail service issues in the Vancouver area. This was permitted by amendments made to the Canada Transportation Act in May 2018, provided the Minister of Transport agrees. The Minister provided his authorization on January 11.

The CTA initiated the investigation based on information received from shipper associations and other parties. The matters covered by the investigation included whether certain commodities were receiving discriminatory treatment and how freight rail permits and/or embargoes were being used.

The investigation had two phases. The first was an information-gathering phase that included a public hearing in Vancouver on January 29 and 30, 2019. The hearing gave railway companies and shipper groups an opportunity to present evidence and respond to questions from the CTA.

The second phase focused on matters identified by the CTA as warranting further examination.

The CTA issued a [determination](#) in this matter on April 15, 2019. The determination found that CP and BNSF had met their service obligations, but CN had breached its obligation to provide the highest level of service reasonably possible in one respect: by announcing, months before congestion or other challenges emerged in the Vancouver-area rail network, its intention to issue embargoes against wood pulp shipments, and then imposing those embargoes. CN was ordered to develop and submit a plan to respond to future traffic surges in the Vancouver area; to only resort to embargoes on an exceptional basis; and to only implement embargoes that are temporary, targeted at specific and actual challenges, and designed to minimize impacts on traffic carriage and delivery.

Filing of railway crossing agreements

Although parties to a road or utility crossing agreement are not required to file it with the CTA, an agreement can be filed so that it is enforceable as if it were a CTA order.

This past year, 25 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.

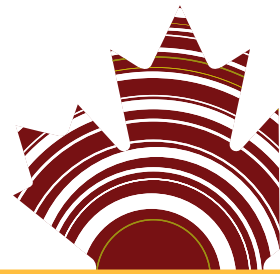
Coasting trade applications

Under the Coasting Trade Act, only Canadian registered vessels can provide marine transportation between points in Canada, unless a coasting licence is issued by the Minister of Public Safety and Emergency Preparedness.

The CTA plays a role in the coasting trade licencing process by determining whether suitable Canadian vessels are available when someone applies to use foreign vessels for domestic commercial marine activities.

In 2018–2019, the CTA received 86 coasting trade applications where no offer to use a Canadian vessel was made, and 8 coasting trade applications that were contested.

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



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

Persons with disabilities have a right to an equal opportunity to benefit from the same level of transportation services afforded to others.

To implement this mandate, the CTA creates regulations for accessibility, promotes them through proactive communications and outreach, monitors compliance and enforces non-compliance through corrective actions and administration monetary penalties, and resolves disputes about accessibility through facilitation, mediation or adjudication.

“Désolé que vous n’ayez pas pu me joindre. Je voudrais profiter de cette occasion pour confirmer qu’un dédommagement satisfaisant m’a effectivement été versé grâce à l’intervention efficace de vos services. Permettez-moi d’adresser à vos services mes remerciements les plus sincères pour leur intervention on ne peut plus efficace dans ce dossier... Avec la croissance exponentielle attendue du nombre des voyageurs, l’utilité des services comme les vôtres n’est plus à démontrer. Encore une fois merci et joyeuses fêtes de fin d’année.”

– Jean-Claude MANIRAKIZA

Highlights from 2018–2019

Accessible transportation is a human right. It allows persons with disabilities to achieve full and equal participation in contemporary life. The CTA's vision is for Canada's national transportation system to be the most accessible in the world, and the CTA is taking steps to translate that vision into reality including through the Regulatory Modernization Initiative, described earlier in this report.

Apart from the Regulatory Modernization Initiative, our 2018-2019 activities related to accessibility include conducting compliance and dispute resolution activities, holding two meetings with our Accessibility Advisory Committee, and hosting a mobility devices and air travel forum in the international arena.

Accessibility applications and outcomes

The CTA resolves complaints about the accessibility of the federal transportation network. In 2018-2019, we received 182 accessibility complaints, which represents a significant increase from the two previous years (120 for 2016-2017 and 122 for 2017-2018). Of the cases that were resolved:

- 71 were resolved through facilitation,
- 11 were resolved through mediation, and
- 12 were resolved through adjudication.

On adjudicated accessibility cases, the CTA made 12 rulings which resulted in the following outcomes:

- Respondent ordered to implement certain measures: 7
- Applicant found not to have encountered an obstacle to their mobility: 2
- CTA finding on compliance order: 1
- Complaint dismissed: 2

The Accessibility Advisory Committee

The CTA has a standing Accessibility Advisory Committee (AAC), made up of representatives from the community of people with disabilities, the transportation industry and other interested parties.

The AAC supports the CTA's development of accessibility-related regulations, guidance material, and approaches. In 2018-2019, AAC meetings were held in June and October and used to consult members on the proposed Accessible Transportation for Persons with Disabilities Regulations.

Mobility devices and air travel forum

In the course of consultations and analysis related to regulatory modernization, it became clear that issues related to the storage and transportation of mobility aids on airplanes have become more serious as mobility devices grow in size and complexity.

On June 12–13, 2018, the CTA organized a multi-stakeholder forum and technical working group focused on significant and growing challenges associated with the transportation and storage of wheelchairs on aircraft. The forum brought together participants from Canada and abroad, including disability rights groups, airlines and their associations, aircraft manufacturers, mobility device manufacturers, regulators and international organizations.

VIA sought leave to appeal this decision, which was denied by the Federal Court of Appeal on April 25, 2017.

On November 1, 2017, the CTA issued a decision requiring VIA to proceed with the provision of guidance to its personnel and to either make the changes described in the first decision or submit an explicit claim of undue hardship supported by clear and detailed evidence.

During the forum, participants examined challenges associated with the transportation and storage of wheelchairs on aircraft and how to help ensure that persons with disabilities can exercise their fundamental right to accessible transportation.

In the months following the forum, the technical working group has continued its work and a report with recommendations is expected later in 2019.

Recent CTA decisions of note

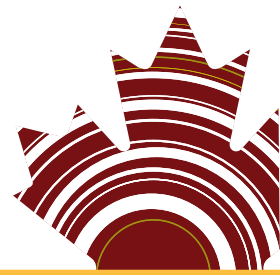
Anderson & Murphy v. Via

As reported in last year's Annual Report, Marie Murphy and Martin Anderson filed an accessibility-related application against VIA, challenging VIA's policy for scooter storage. The CTA issued a decision on February 15, 2017 finding that obstacles preventing adequate scooter storage did in fact exist.

On November 1, 2017, the CTA issued a decision requiring VIA to proceed with the provision of guidance to its personnel and to either make the changes described in the first decision or submit an explicit claim of undue hardship supported by clear and detailed evidence.

On October 9, 2018, based on VIA's submission, the CTA ordered VIA to proceed with the implementation of accommodation measures, including different requirements for different corridors of its network, and provide the associated training across its network. In addition, VIA was ordered to report to the Chief Compliance Officer of the CTA every six months from the date of the decision, until December 31, 2020.

Providing consumer protection for air passengers



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

One of the ways the CTA implements this mandate is by providing tools, information and guidance to help travellers prepare for their trip. For example, the CTA'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 CTA may be able to help. The CTA can resolve [complaints](#) on issues such as:

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

"Send along [my] appreciation and thanks to Josh and Radhika for their outstanding work because they make my job a lot easier. "

– David Atkins (Flair Airlines)

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

Finally, when it has grounds to believe that an air travel issue may exist, the CTA can use its authority to initiate inquiries on its own motion — which it currently has only for international air travel matters — to assess whether airlines' terms and conditions are:

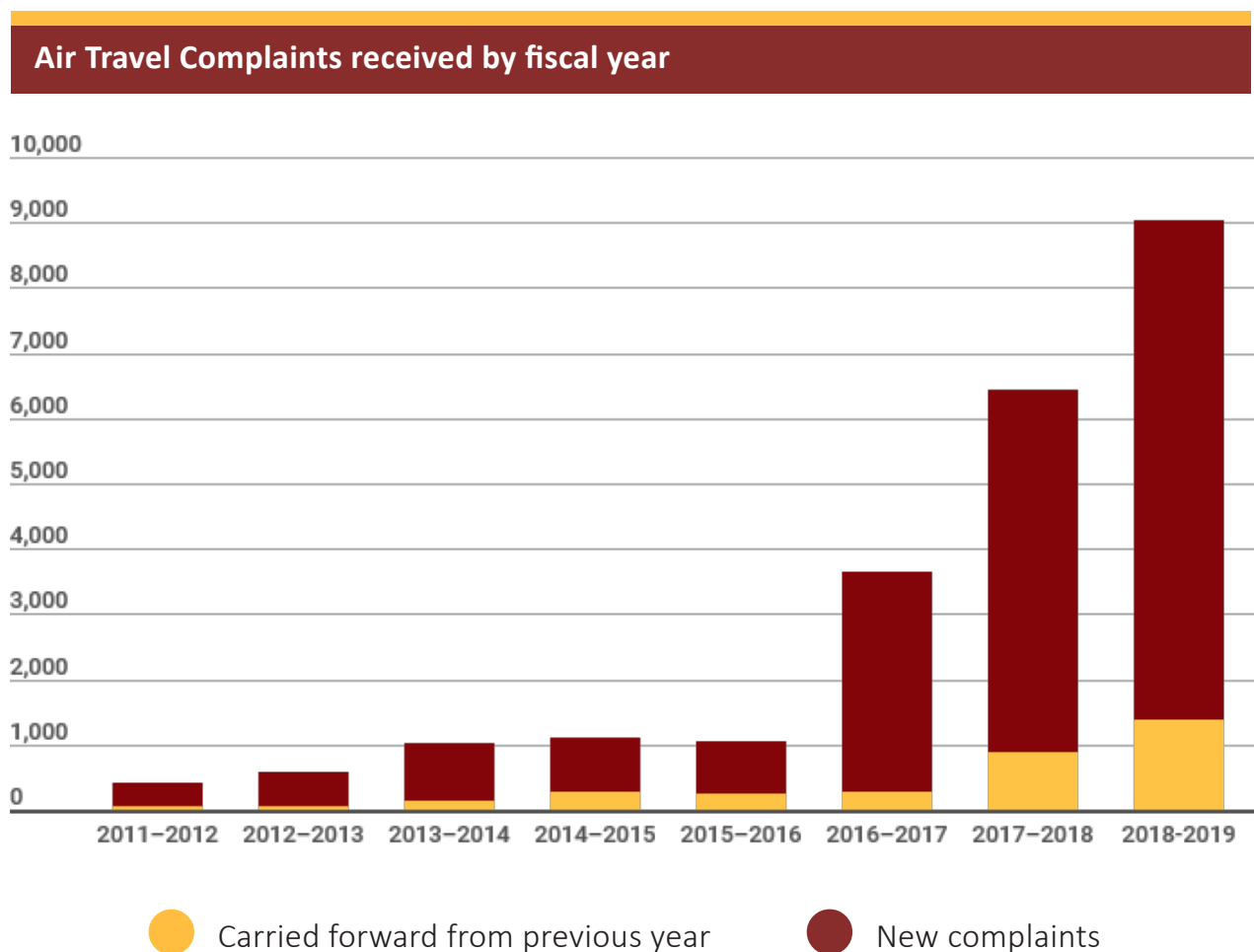
- in line with all applicable legislation, regulations, international conventions, and CTA decisions;

- reasonable and clear;
- not unjust or unduly discriminatory; and
- respected by the airlines.

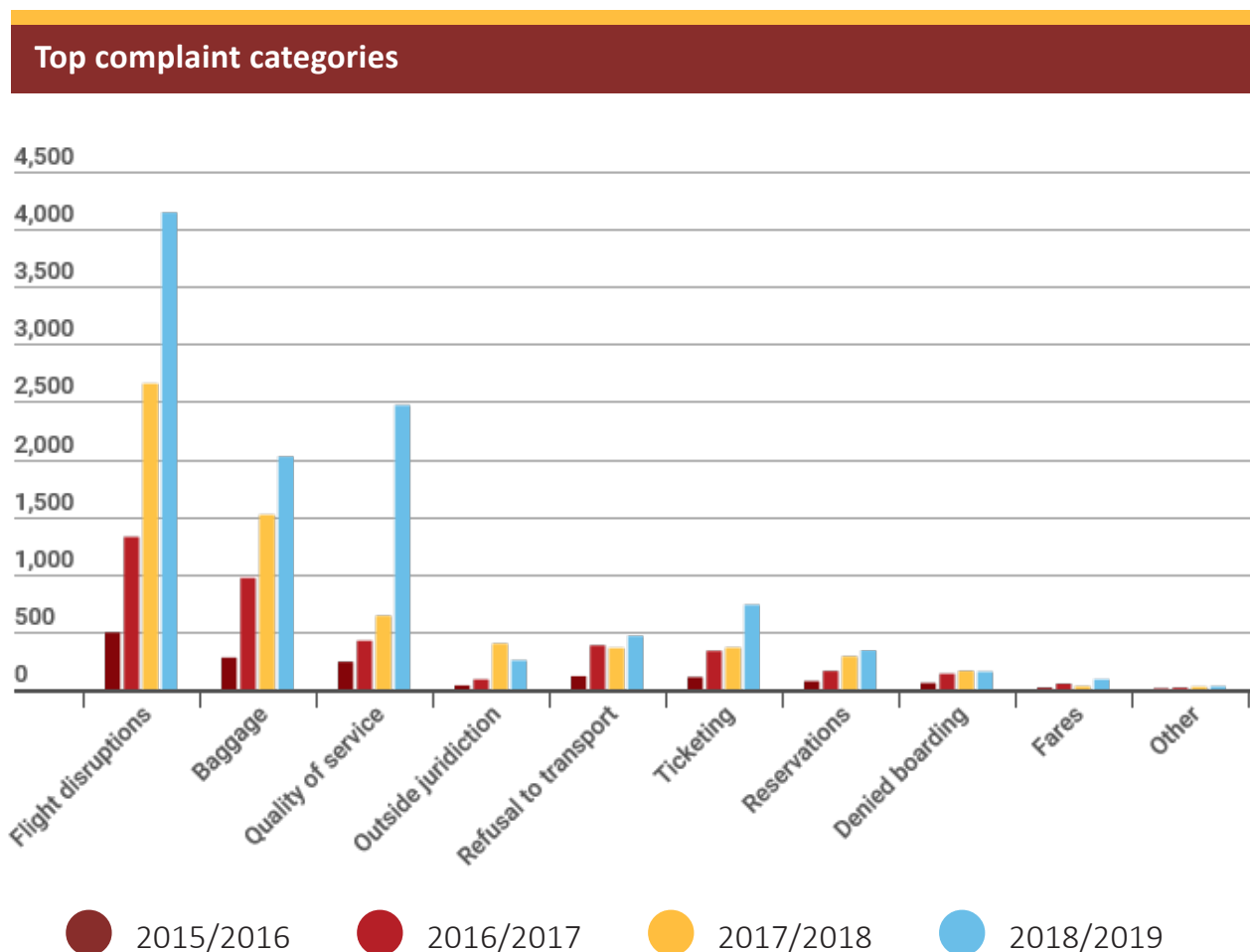
Highlights from 2018–2019

Air travel complaints continue to rise

For the third year in a row, the CTA received a record number of airline complaints — 7,650.



The CTA processed 5,839 complaints in 2018-2019 against 100 airlines from 53 countries worldwide. Of those resolved, 99% were resolved through informal facilitation and mediation services, and 1% through formal adjudication.



Consistent with previous years, flight disruptions and baggage issues remained the top two issues within the CTA's jurisdiction that were raised by passengers in complaints. Complaints related to flight disruptions rose by 56%, while baggage-related complaints increased by 33%.

Approximately half of the flight disruption complaints we received were related to flight delays and cancellations, while the remaining complaints concerned misconnections and other issues, such as re-routing and schedule changes.

Over a third of baggage-related complaints were due to baggage arriving late at its destination. One fifth of all baggage complaints involved claims regarding airlines' limits of liability; 15% were related to lost baggage; and another 12% concerned damaged baggage.

We have observed an increase in complaints about third-party online retailers offering cheap flights but with restrictions and limitations on flight changes, baggage and refunds.

“I cannot speak more highly of the Canadian Transportation Agency for their help. Obtaining a refund from the airline would have been impossible without their work. They investigated our case and found that the airline had not complied with Canadian law. Not being a lawyer myself, their help and expertise was invaluable.”

— RG

Recent CTA decisions of note

Gavryliuk v. Air Canada and Lufthansa

In December 2018, the CTA issued a decision where it found that Air Canada, acting as an agent for Lufthansa, failed to properly apply the terms and conditions set out in Lufthansa’s tariff.

The applicant and her children were scheduled to travel on Air Canada and Lufthansa code share flights from Ottawa, Ontario, to Lviv, Ukraine, via Montreal, Quebec, and Munich, Germany. Due to a mechanical problem on the first leg of the trip, the family was rebooked on flights two days later. Those flights, however, incurred multiple delays because of poor weather conditions. The family eventually arrived in Kyiv, Ukraine, and made their own way to the applicant’s hometown near Lviv. Air Canada denied its liability for the expenses incurred by the applicant.

The CTA found that Air Canada did not establish that it took all reasonable measures to avoid the damage caused by the delay of the family’s original flight, as required under Article 19 of the Montreal Convention and referenced in Lufthansa’s tariff. The CTA also found that the expenses incurred from the delays of the rebooked flights were directly linked to the original delay, given that those expenses would not have been incurred if the original flight had operated as scheduled, or if the family were transported to Montreal in time to catch their originally scheduled onward flights.

The CTA ordered Air Canada to compensate the applicant for the out-of-pocket expenses they incurred.

Abbas v. Pakistan International Airlines

In April 2018, the CTA issued a decision where it found that Pakistan International Airlines (PIA) failed to properly apply the terms and conditions set out in its tariff.

The applicant filed an application concerning a piece of their checked baggage that was lost between Islamabad, Pakistan and Toronto, Ontario. The applicant sought compensation in the amount of \$2,500 for the replacement value of the items that were contained in the baggage and for the piece of luggage itself.

PIA did not contest that the baggage was lost, but argued that the amount of compensation being claimed was unreasonable. In support of their claim, the applicant filed a list of all of the items contained in their baggage and receipts for some of the items. The CTA found the \$2,500 claim was reasonable; however, Article 22(2) of the Montreal Convention, incorporated by reference into the carrier's tariff, limits the carrier's liability to 1,131 Special Drawing Rights (approximately \$2,040.26).

The CTA found that PIA, in not compensating the applicant, failed to respect its tariff and ordered PIA to compensate the applicant in the amount of \$2,040.26.

"This email is to confirm the receipt of the check [sic] that was issued by Air Canada as compensation for my lost bag. The check [sic] has been deposited and the issue is now considered resolved.

Thank you for mediating the matter between Air Canada and myself to have this resolved, saying it is appreciate[d] is an understatement. Having the Canadian Transportation Agency be involved in this has made this experience a lot quicker and easier than anticipated.

Thank you and best regards,"

– A.J.S

Parry v. Tyax

In December 2018, the CTA issued a decision regarding the rates that Tyax Air Service Ltd. (Tyax Air) charged for float plane charter service between Tyaughton Lake and Spruce Lake, British Columbia. The applicant alleged that Tyax Air had a de facto monopoly route and was price gouging the residents of Spruce Lake and the public, in violation of section 66 of the Canada Transportation Act (Act)

Tyax Air objected to the application, noting that there were different options available to the residents of Spruce Lake, and pointing out that they could hire any air charter company they like. The applicant acknowledged that, as owners of land on Spruce Lake, the residents of Spruce Lake are allowed to travel with any air carrier to be dropped off on their land.

In its determination, the CTA noted that although commercial flights into Spruce Lake available to the general public may be limited to two commercial carriers, this was not the case for the residents of Spruce Lake. The CTA found that since there was at least one other service that was a reasonable alternative to Tyax Air, the CTA was precluded from making an order under subsections 66(1) or (2) of the Act and therefore dismissed the application

“Ce mail est pour vous dire que nous avons été intégralement remboursés! Nous avons même touché plus que ce que nous espérions.

Nous sommes soulagés de ce dénouement heureux et tout ceci grâce à vous! Nous vous remercions infiniment pour votre aide et votre grand professionnalisme. Nous reviendrons un jour au Québec!

Bien cordialement,”

– AG et FG

Sunwing inquiry

On April 25, 2018, the CTA initiated an inquiry on its own motion in respect of numerous disruptions to flights operated by Sunwing at the Toronto Pearson International Airport between April 14 and 18, 2018. The inquiry was initiated in light of multiple complaints from passengers and media reports. On May 2, 2018, the inquiry was expanded to include disruptions to Sunwing's flights at the Montréal-Pierre Elliott Trudeau International Airport on the same dates. In total, 574 complaints filed by passengers with the CTA were included in the scope of the inquiry.

The inquiry considered whether Sunwing properly applied the terms and conditions of carriage set out in its scheduled and non-scheduled international tariffs, and whether those terms and conditions were reasonable, in respect of:

- Flight delays;
- Flight cancellations;
- Tarmac delays; and
- Lost, damaged, and delayed baggage.

The initial trigger for the breakdown in Sunwing's service was an ice storm in Toronto. The weather-related delays resulted in knock-on delays throughout the carrier's network, notably in Montréal. Over the time period in question, a total of 77 flights were delayed by more than 4 hours; 43 flights were delayed by more than 8 hours; 15 scheduled flights were delayed on the tarmac for over 90 minutes; and multiple passengers' baggage was lost, delayed and/or damaged. Another cause of the Sunwing service disruptions was staffing problems experienced by Swissport, which was responsible for providing a number of different types of ground handling services on behalf of Sunwing. Finally, the problems related to weather, scheduling and staffing were compounded by a lack of communication between the major players, including Sunwing, the Greater Toronto Airports Authority, and Swissport. Sunwing did not cancel any of its flights.

On April 8, 2019, the CTA issued its determination, finding that Sunwing had not properly applied the terms and conditions set out in its scheduled international tariff. The CTA ordered Sunwing to compensate passengers for their out-of-pocket expenses incurred as a consequence. Reasonable expenses included:

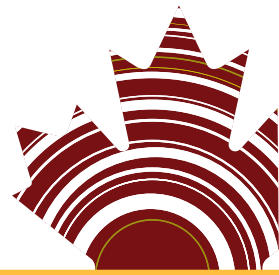
- Reimbursement for hotel accommodations at destination;
- Transfers to hotels; and
- Meal expenses incurred as a result of the delay.

As the Montreal Convention applied to all of its international flights, Sunwing was also required to compensate passengers for reasonable expenses incurred as a result of the flight delays, or loss, damage or delay to passengers' baggage.

The CTA further ordered Sunwing to develop a contingency plan to ensure that it could meet its tariff obligations in the case of widespread flight disruptions in the future.

Shortly after issuance of the determination, a CTA designated enforcement officer imposed a penalty of \$694,500 on Sunwing.

Compliance Monitoring and Enforcement



The CTA regulates approximately 1,500 entities across a broad legislative mandate that includes about 150 provisions enforceable by way of administrative monetary penalties. This number will significantly increase with the expected publication in 2019 of new and amended regulations. The CTA also issues enforceable orders in relation to these statutory and regulatory provisions to address disputes and findings of non-compliance.

The CTA is committed to ensuring effective monitoring and enforcement of industry compliance with their legal obligations. This includes, in particular, ensuring compliance with all CTA orders and ensuring that railway companies maintain required liability insurance coverage.

Highlights from 2018–2019

Concrete steps were taken to continue to enhance and modernize the CTA's compliance assurance program and to develop strategies and tools to monitor and to enforce compliance with new and amended regulations, which will be deployed as the regulations come into force.

The CTA developed a methodology for data-driven, risk-based compliance assurance that will help ensure that compliance monitoring and enforcement activity is proportionate to the risk and impact of non-compliance. More resource intensive activities, such as on-site inspections, will be directed to entities at a higher risk of non-compliance and where the potential impact of non-compliance on users of the transportation system is greater. Resources for lower intensity activities (e.g. desk audits and compliance self-assessment questionnaires) will be directed where there is a lower risk of, and a lower expected impact associated with, non-compliance.

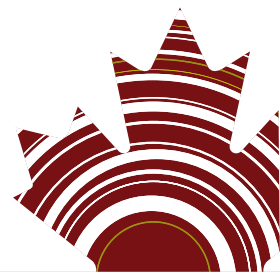
Applying a risk-based approach to compliance will allow the CTA to effectively target our resources. It will also position the organization to expand oversight coverage to a larger number of regulated entities across all modes of transportation in relation to the broad range of legal obligations we enforce.

Additional resources were deployed to increase the CTA's capacity to support the implementation of the data-driven, risk-based compliance monitoring and enforcement program. This included supporting the development of a compliance risk assessment tool and hiring compliance analysts to develop and maintain compliance strategies and tools, undertake compliance patterns and trends analysis, and carry out monitoring activities. This new modernized compliance assurance program equips the CTA to deliver on its expanded mandate by having the tools required to monitor and enforce both existing and new regulations.

Designated Enforcement Officers undertook 35 air price advertising verifications that resulted in enforcement actions, and 116 on-site inspections. They completed 59 investigations resulting in monetary penalties, which totalled \$185,000, including \$52,200 issued to one foreign air carrier for operating flights without holding a valid licence.

To support the removal of obstacles to the mobility of persons with disabilities, on-site inspections included the verification of compliance with the *Personnel Training for the Assistance of Persons with Disabilities Regulations*. With the goal of fostering better compliance in advance of new accessibility regulations coming into force, compliance analysts also assessed compliance of Provincial Airways, the St John's and Sydney airports, Via Rail's Ottawa and Montreal stations and some of its rail cars, and Marine Atlantic's Sydney terminal as well as one of its vessels, with the CTA's accessibility codes of practice.

Compliance analysts also followed up with regulated entities to ensure compliance with CTA orders. The CTA suspended the licences of a number of air carriers that failed to meet the insurance requirements of their licences.



Assessment of the Act

The CTA is required to report on the operation of the *Canada Transportation Act* (Act) — and any difficulties observed in its administration — through its Annual Report.

Since 2017, significant changes have been made to the Act, addressing many of the CTA's past comments. For example, the *Transportation Modernization Act* has provided the CTA with own motion authorities in the area of rail service, as long as the Minister of Transport gives his authorization. If Bill C-81, the proposed *Accessible Canada Act*, is passed into law, the CTA will have a similar power to initiate an own motion inquiry related to accessibility, with the approval of the Minister of Transport. The *Accessible Canada Act* will also align the remedies available to individuals submitting complaints to the CTA about alleged transportation accessibility issues with the remedies available to people complaining to the Canadian Human Rights Commission about other accessibility concerns.

The CTA will monitor and assess the impacts of these and other amendments over the coming period.

This year's Assessment of the Act, therefore, focuses on four important changes of a more administrative nature that we believe, based on our experience administering the Act, will allow us to deliver our mandates more efficiently and effectively.

Temporary Member appointments

Members are the CTA's decision-makers. Full-time Members are appointed by the Governor in Council (GIC — essentially, Cabinet) on the recommendation of the Minister of Transport. Part-time Members, who are typically paid on a per diem basis, come from a roster that is also established by the GIC on the Minister of Transport's recommendation. But they only become temporary Members if appointed off the roster by the same Minister. Moreover, only three temporary members can be appointed at any time, and no temporary Members can be appointed for more than two consecutive terms.

These provisions introduce extra steps and potential delays when the CTA's Chair — who assigns panels of Members to hear cases — wants to draw on the expertise of a particular individual on the roster for a specific case. They also limit the ability of the Chair to expand or decrease the number of Members based on file volumes.

The CTA would be able to respond with greater efficiency and agility to requests for dispute adjudications and regulatory determinations — and reduce spending when case numbers decline — if the Chair was authorized to draw temporary Members directly from the roster, the cap on the number of temporary Members was removed or raised, and temporary Members were permitted to serve more than two consecutive one-year terms.

These adjustments would be consistent with the legislative frameworks of many tribunals.

Internal delegation

Unlike many other tribunals and regulators, the CTA does not have the legal authority to delegate routine matters with minimal scope for discretion to staff. As a result, the CTA's Members must spend time on these matters — time that could be better invested in dealing with more significant dispute adjudications and regulatory determinations. In a period of growing case numbers, receiving this authority is doubly important.

Administrative monetary penalties

Administrative monetary penalties (AMPs) are a tool commonly used by regulators to efficiently enforce legal requirements and create incentives for compliance. The Act set the current maximum penalty amount, in 1996, at \$25,000 for corporations and \$5,000 for individuals.

The maximum AMP, however, has not been updated in the intervening years, and still stands at \$25,000. If Bill C-81 is passed into law, the maximum AMP for violations of accessibility-related requirements will rise to \$250,000. To better reflect today's economic realities and other regulators' compliance provisions — and to ensure consistency across different CTA mandates — the maximum AMP could be set at \$250,000 for all CTA enforcement matters.

In addition, to avoid inefficient duplicative processes, the Act should explicitly allow an enforcement officer to rely on the conclusions of a dispute adjudication or regulatory determination when deciding whether to levy an AMP – rather than, as is the case now, having to at least partially re-investigate the issues addressed in that adjudication or determination.

Appeals

Subsection 41(1) of the Act provides a right of appeal with leave to the Federal Court of Appeal (FCA) from a decision, order, rule or regulation issued by the CTA. Pursuant to subsection 41(4) of the Act, the CTA is entitled to be heard by Counsel or otherwise on the argument of an appeal.

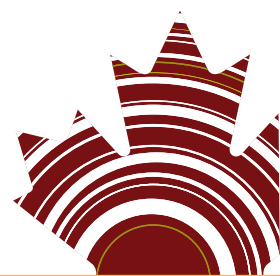
Although the CTA has the statutory right to make representations in appeals, there has in practice been some inconsistency around the nature and extent of the CTA's participatory rights in specific cases. There has also been a lack of clarity as to whether the CTA's right to be heard on an appeal includes the right to file submissions on an application for leave to appeal.

In many appeals, allegations and arguments made by an appellant will remain untested in the absence of participation by the CTA, because there is no respondent, the respondent does not participate in the appeal, or the respondent is under-represented. This risks leaving the FCA without sufficient information and context to fully address the issues raised in the appeal.

Even where a respondent participates in the appeal, the CTA, as an expert tribunal and a regulator with specialized knowledge of the regulatory framework and the industries it regulates, is well-positioned to provide information and arguments that may assist the FCA in making an informed decision. This applies equally when the FCA is determining an application for leave to appeal and an appeal.

Clarifying that the CTA's participatory right includes the right to respond to all arguments raised in an appeal, including at the leave stage, would help ensure that the record before the FCA is as complete as possible.

Appendix — Airlines against which complaints were filed during 2018–2019



**Does not include cases withdrawn, declined, or out of jurisdiction.*

Airline	Nationality	Total
Air Canada	Canada	1,997
WestJet	Canada	369
Air Transat A.T. Inc.	Canada	302
Sunwing Airlines Inc.	Canada	252
Flair Airlines Ltd.	Canada	225
Porter Airlines Inc.	Canada	114
Compagnie Nationale Royal Air Maroc	Morocco	83
United Airlines, Inc.	United States of America	79
Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines)	Germany	77
Primera Air	Iceland	68
Wow air ehf.	Iceland	67
Société Air France	France	54
Swoop Inc.	Canada	48
American Airlines, Inc.	United States of America	46
Türk Hava Yollari Anonim Ortakligi (Turkish Airlines Inc.)	Turkey	44
Iberia, Lineas Aereas de Espana, S.A. (Iberia Air Lines of Spain)	Spain	42
OpenSkies	France	41

Airline	Nationality	Total
Sata Internacional- Serviços e Transportes Aéreos, S.A.	Portugal	41
British Airways Plc	United Kingdom	34
Aerovias de Mexico S.A. de C.V.	Mexico	33
Delta Air Lines, Inc.	United States of America	31
Transportes Aéreos Portugueses, S.A.	Portugal	30
Jet Airways (India) Limited India	29	
Koninklijke Luchtvaart Maatschappij, N.V. (K.L.M. Royal Dutch Airlines)	Netherlands	29
Etihad Airways P.J.S.C.	United Arab Emirates	24
China Eastern Airlines Corporation Limited	China	23
Saudi Arabian Airlines Corporation	Saudi Arabia	22
Cubana de Aviacion S.A.	Cuba	21
Qatar Airways (Q.C.S.C.)	Qatar	21
Fly Jamaica Airways Limited	Jamaica	20
Swiss International Air Lines Ltd.	Switzerland	20
Emirates	United Arab Emirates	18
Polskie Linie Lotnicze LOT SA (LOT Polish Airlines SA)	Poland	17
Aer Lingus Limited	Ireland	16
Condor Flugdienst GmbH	Germany	16
Ethiopian Airlines Enterprise	Ethiopia	15
Icelandair ehf	Iceland	15
Air China Limited	China	14
Brussels Airlines NV/SA	Belgium	14
Alitalia- Società Aerea Italiana S.p.A.	Italy	13

Airline	Nationality	Total
K.D. Air Corporation	Canada	13
Philippine Airlines, Inc.	Philippines	13
Compañía Panameña de Aviacion, S.A.	Panama	11
Pakistan International Airlines Corporation	Pakistan	11
Aerovias del Continente Americano S.A.	Colombia	10
ABC Aerolineas, S.A. DE C.V.	Mexico	9
Corsair	France	9
EgyptAir	Egypt	9
EPE SPA Air Algérie	Algeria	9
Eva Airways Corporation	Taiwan	9
Air India Limited	India	8
Austrian Airlines AG	Austria	8
Cathay Pacific Airways Limited	Hong Kong	8
China Southern Airlines Company Limited	China	7
LATAM Airlines Group S.A.	Chile	7
Orca Airways Ltd.	Canada	6
Société Tunisienne de l'Air	Tunisia	6
Air Creebec Inc.	Canada	5
All Nippon Airways Co., Ltd.	Japan	5
China Airlines Limited	Taiwan	5
Air Serbia	Serbia-Montenegro	4
Alaska Airlines, Inc.	United States of America	4
Perimeter Aviation	Canada	4
Qantas Airways Limited	Australia	4
Bearskin Lake Air Service LP, as represented by its general partner, Bearskin GP Inc.	Canada	3

Airline	Nationality	Total
Canadian North Inc.	Canada	3
Caribbean Airlines Limited	Trinidad and Tobago	3
Finnair OYJ	Finland	3
Hainan Airlines Company Limited	China	3
Pacific Coastal Airlines Limited	Canada	3
Air Inuit Ltd.	Canada	2
Air New Zealand Limited	New Zealand	2
Calm Air International LP, as represented by its general partner, Calm Air GP Inc.	Canada	2
Central Mountain Air Ltd.	Canada	2
Frontier Airlines	United States of America	2
Hong Kong Airlines Limited	Hong Kong	2
Nihon Koku Kabushiki Gaisha (Japan Airlines Co., Ltd.)	Japan	2
Oman Air	Oman	2
South African Airways SOC Limited	South Africa	2
Transwest Air Limited Partnership, by its general partners, 101008427 Saskatchewan Ltd. and 101004597 Saskatchewan Ltd.	Canada	2
Ukraine international Airlines	Ukraine	2
Van City Seaplanes Ltd.	Canada	2
Aegean Airlines S.A.	Greece	1
Aeroenlaces Nacionales S.A. de C.V.	Mexico	1
Air Liaison	Canada	1
Air North	Canada	1
ALIA- The Royal Jordanian Airline plc (Royal Jordanian)	Jordan	1

Airline	Nationality	Total
Asiana Airlines, Inc.	South Korea	1
Croatia Airlines	Croatia	1
Integra Air	Canada	1
Kenya Airways Ltd – Unlicensed	Kenya	1
Korean Air Lines Co. Ltd.	South Korea	1
Kuwait Airways	Kuwait	1
Liat Airlines	Antigua and Barbuda	1
Malaysian Airline System Berhad	Malaysia	1
Norwegian Air International Limited	Ireland	1
TAM – Linhas Aereas S.A.	Brazil	1
Transavia Airlines C.V.	Netherlands	1
Tyax Air Services	Canada	1
Xiamen Airlines Co., Ltd.	China	1
Grand	Total	4,668