



Canadian
Transportation
Agency

Office
des transports
du Canada

ANNUAL REPORT

2017-2018



Canada 

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May 2018

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 (CTA) for the period 2017–2018, including the CTA's assessment of the operation of the Act and any issues observed in its administration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Scott 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

The 2017-18 period covered by this Annual Report was a productive and exciting time for the CTA.

We continue to see a substantial rise in the number of Canadians turning to us for assistance with air travel issues. Between 2012 and 2016, the CTA received about 700 air travel complaints annually. In 2017-18, we got that many in some months, and ended up receiving 5500 over the year. This dramatic increase is likely due to a number of factors, including the CTA's modest efforts, since Fall 2016, to better inform air passengers of their rights and the availability of recourse through the CTA if they have issues that cannot be resolved directly with airlines.



One specific air travel proceeding drew a great deal of attention last year: the public hearing into the delays on the tarmac of two Air Transat flights on July 31, 2017. The hearing was organized as part of the inquiry the CTA initiated on its own motion into those tarmac delays. The high degree of interest no doubt reflected widespread questions and concerns about how passengers are treated when their flights are disrupted.

New air passenger protection regulations that the CTA will make if and when Bill C-49 comes into force (at the time of writing, the Bill was still before Parliament) will help address these questions and concerns, by setting airlines' minimum obligations to passengers with respect to communication, flight delays and cancellations, denied boarding, tarmac delays, the seating of children, and the transportation of musical instruments.

The number of Canadians with disabilities bringing issues to the CTA is also going up. In 2017-18, we received 123 complaints about the accessibility of transportation services, almost double what we received in 2015-16. Accessible transportation is not a privilege, it is a fundamental right, and the CTA is committed to taking practical actions to make Canada's national transportation system the most accessible in the world.

One such action is to integrate existing accessible transportation rules and guidelines into a comprehensive, modern accessible transportation regulation. We began this project as the first phase of our Regulatory Modernization Initiative in May 2016, and in 2017-18, completed consultations and released a document summarizing their results. We're optimistic that these and other updated regulations will come into effect by 2019-20.

Our commitment to timely, fair, and effective services for Canadians is reflected not only in our regulatory modernization and outreach efforts, but also in how we deliver adjudications, where our quasi-judicial nature comes most clearly into view. We have, for example, returned to oral hearings – which can be far more efficient than written

pleadings alone in dealing with certain types of cases, including complex disputes where large quantities of competing evidence and argument must be weighed. In 2017-18, we held an oral hearing into a dispute between West Vancouver and CN concerning the Centennial Seawalk, and a videoconference-based oral hearing into procedural matters raised in the context of the application of Mark Rosner against the Hudson Bay Railway Company. More such hearings can be expected in the future.

Established in 1904, the CTA is Canada's longest-standing independent, expert tribunal and regulator. To mark the 150th anniversary of Confederation, the CTA updated and re-released, for Canada Day, an historical overview originally published on its centenary entitled, *At the Heart of Transportation: A Moving History*.

Finally, 2017-18 saw the end of the terms of two CTA Members. Sam Barone served in the role of Vice Chair for five years, including five months as acting Chair, and Stephen Campbell served for three years as a regular Member. Both discharged their responsibilities with dedication and professionalism, words that describe all of the CTA's Members and the 220 public servants who work in the organization. It is thanks to their commitment to impartiality, engagement, and excellence that the CTA is able to effectively deliver the mandates Parliament has given us and, in so doing, contribute to the economic and social well-being of our fellow Canadians.



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.

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 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.

This year, the CTA is including in its Annual Report – for the first time -- some key metrics on the air, rail, and marine sectors. This new section will provide context for some of the CTA's regulatory and adjudicative activities. Additional information will be provided in the years to come, as we gather more data and refine our analytical tools.

Air Sector

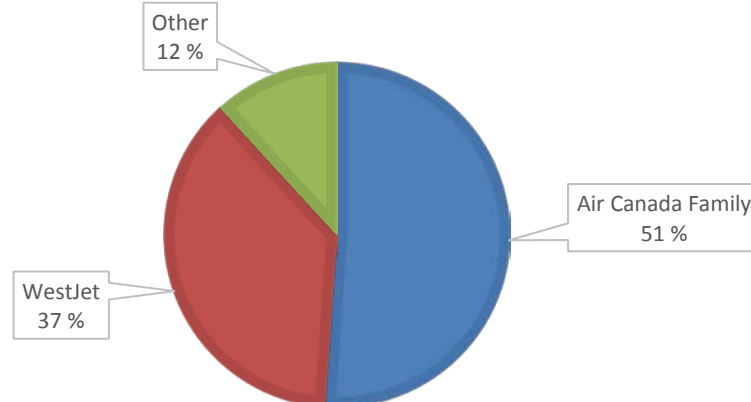
The domestic air sector in Canada is dominated by two major carriers: Air Canada and WestJet, which account for 88% of total scheduled domestic seat kilometres, while a variety of other regional, leisure and local carriers make up the remaining 12% of scheduled domestic seat kilometres. In 2017, major Canadian airlines, which include all

level I carriers, earned over \$21.7 billion in operating revenues, an increase of 9.7%.

Developments in the Air Sector

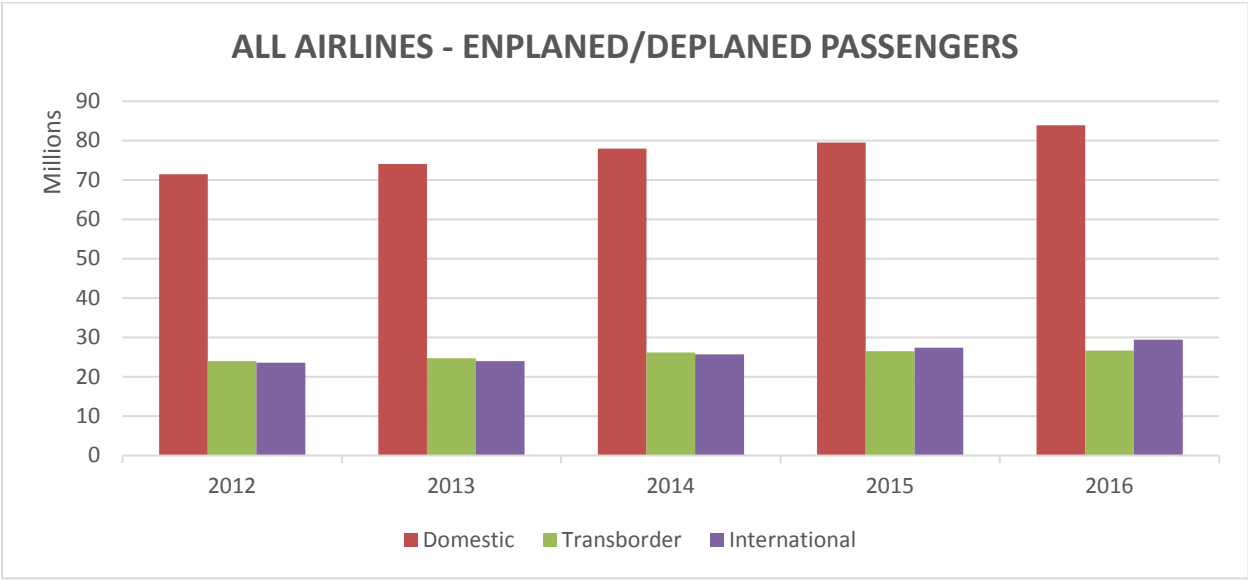
- WestJet and Air Canada, Canada's two largest carriers, increased revenue passenger miles (RPMs) by 8.1% and 11.3% respectively in 2017, resulting in nearly 111 billion RPMs.
- Many carriers operating in Canada have moved towards de-bundled fares, offering stripped-down base fares with a full suite of ancillary services.

MARKET SHARE OF DOMESTIC SCHEDULED AVERAGE DAILY SEAT KILOMETRES, 2016



Source: Transportation in Canada Addendum 2016, Table A12: Average Scheduled Daily Seat-Kilometres, by Air Carrier, Domestic Sector, 2015 and 2016

Over the past five years, the number of enplaned and deplaned passengers on domestic, transborder, and international flights have all increased, with the largest percent increase in international flights.



Source: Transportation in Canada Addendum 2016, Table A15: Top 10 busiest Canadian airports in terms of Enplaned/Deplaned Revenue Passengers, by Sector, 2007-2016

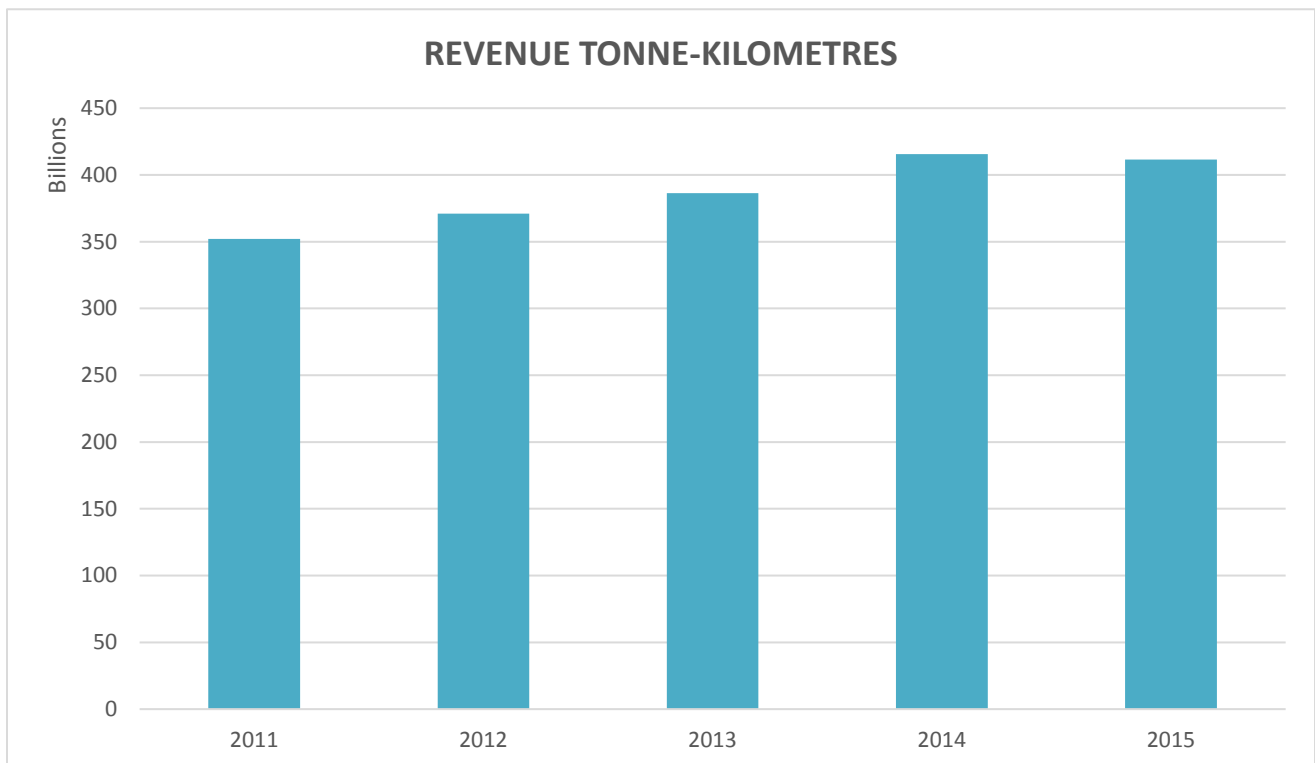
Rail Sector

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

Revenue tonne-kilometres increased by 17% between 2011 and 2015. Class I railways accounted for 97% of all revenue tonne-kilometres in 2015.

Developments in the Rail Sector

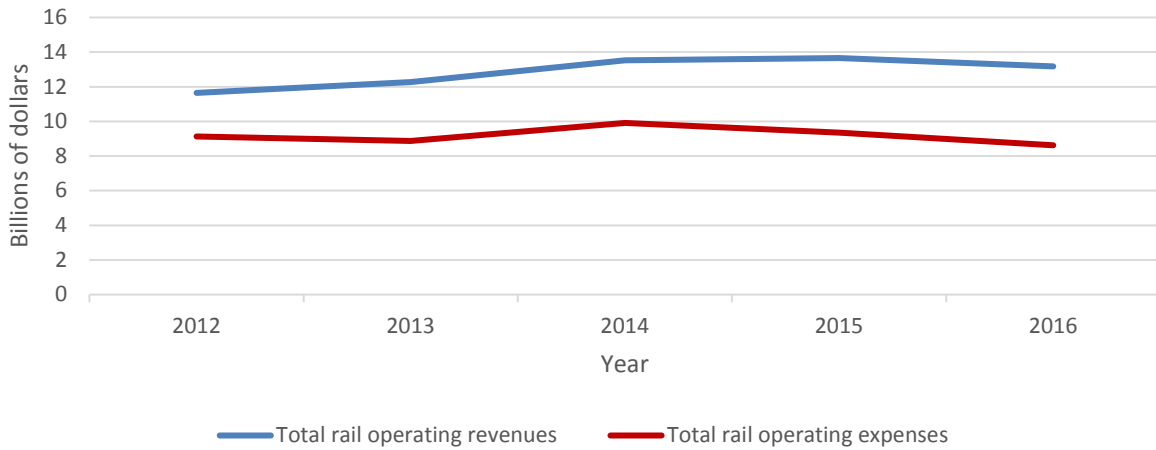
- There was a large rise in demand for rail freight services in 2017-2018 due to increased demand for many of the commodities shipped by rail.
- The 2017-2018 western grain crop was one of the largest on record, with production estimated to be nearly 72 million tonnes. This contributed to transportation backlogs that sparked concerns and debates reminiscent of the 2013-14 crop year.
- There was a large increase in intermodal traffic in 2017.



Source: Transportation in Canada Addendum 2016, Table RA5: Revenue Tonne-Kilometres, by Railway Sector, 2006–2015

Total operating revenues for Canadian mainline railway companies, which include CN, CP and VIA Rail, reached \$13.2 billion in 2016, an increase of 13% between 2012 and 2016. Over the same period, total operating expenses decreased by 6% to \$8.6 billion.

OPERATING REVENUES AND EXPENSES, MAINLINE RAILWAY COMPANIES

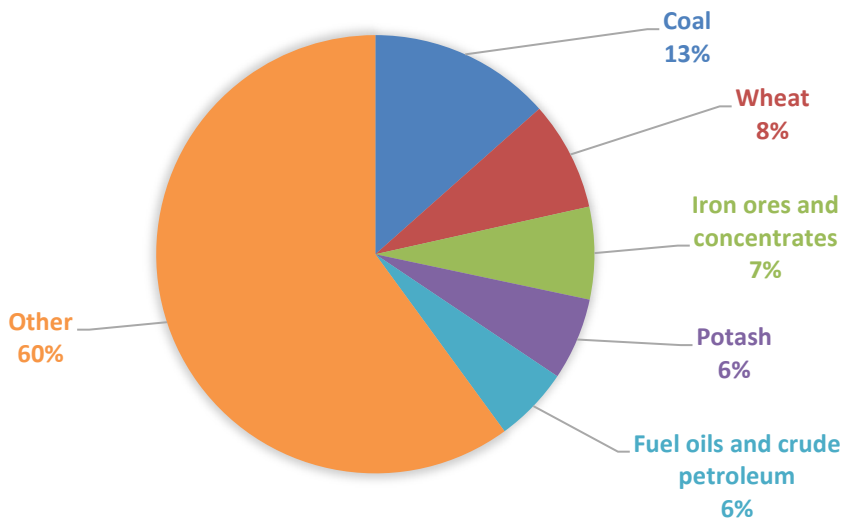


Source: Statistics Canada. Table 404-0004 - Railway transport survey, operating and income accounts, by mainline companies, annual (dollars), CANSIM (database). (accessed: March 12, 2018)

The financial community measures the efficiency of a railway company on the basis of their operating ratios, which is the operating expenses divided by operating revenues. CN and CP's operating ratios for their North American operations were both 57.4% in 2017, which were at or near record lows for both companies.

Shippers of many commodities rely on rail to move their products to market. There are five commodity groups that make up nearly 40% of annual rail shipments, by tonnes: coal, wheat, iron ores and concentrates, potash, and fuel oils and crude petroleum. Coal shipments alone accounted for 13% of all tonnes shipped by rail in 2015.

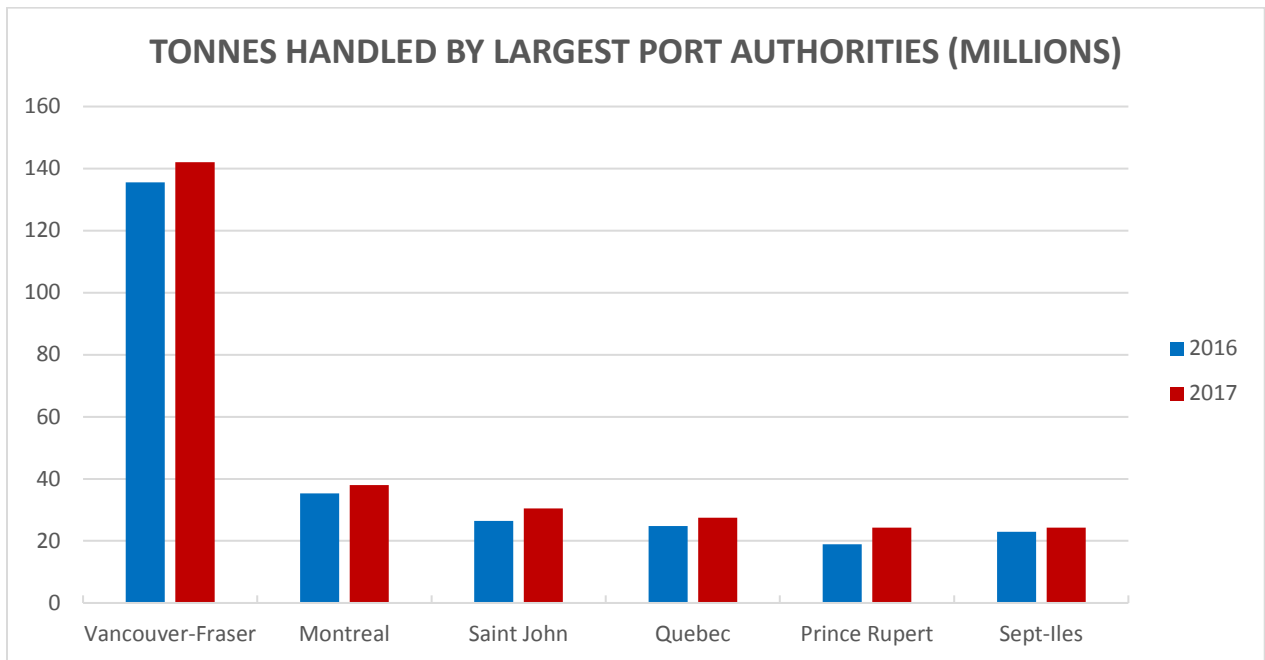
TOP 5 COMMODITIES, BY METRIC TONNES, 2015



Statistics Canada. Table 404-0021 - Rail transportation, origin and destination of commodities, annual (tonnes), CANSIM (database). (accessed: March 12, 2018)

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 over 335 million tonnes of cargo in 2017, an increase of 7.8% over 2016. Over 40% of tonnes handled by Canada Port Authorities were through the Vancouver Fraser Port Authority.



Source: Transportation in Canada / Canadian Port Authorities 2018.

Note: Tonnage at the Port of Vancouver-Fraser Port Authority includes transshipment within the port.

In 2017, Canadian-flagged vessels carried the majority of domestic coasting trade traffic through Canada's port system. There were a total of 38 million tonnes moved through the St. Lawrence Seaway, more than one-quarter of which was grain traffic.

Regulatory Modernization Initiative

In May 2016, the CTA launched its Regulatory Modernization Initiative (RMI) – a full review of all the regulations and guidelines it administers to ensure that they keep pace with evolving business models, user expectations, and best practices in the regulatory field at a time when the transportation system is faster, more automated, more complex, and more cost-sensitive than ever.

The RMI has three 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 CTA aims to complete all consultations, draft the regulations, provide its own approval, and seek the required second approval from the GIC by spring 2019.

During 2017-2018, the CTA completed the consultations for the first two phases of the RMI, focusing on accessible transportation and airline licensing, charters, and insurance.

Phase 1: Accessible Transportation

The first phase of RMI consultations focused on regulations related to ensuring an accessible federal transportation network for persons with disabilities.

As part of the RMI, the CTA is looking at integrating two existing regulations and several voluntary codes of practice into a single mandatory regulation, while updating 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 had an opportunity to provide feedback, the CTA conducted wide-ranging online and in-person consultations on accessible transportation regulations. In May 2017, the CTA published a summary of the 200 written submissions received and other advice that was provided verbally in the [What We Heard Summary Report on Accessible Transportation](#).

These consultations revealed broad support for the development of a comprehensive set of accessible transportation rules that apply across the transportation network; for staff training and education on how to effectively serve and interact with people with disabilities; and for the use of multi-year accessibility plans, industry self-reporting, and accessibility audits to help ensure that regulations are being followed.

Phase 2: Air Transportation

The second phase of RMI consultations, launched in December 2016, dealt with air transportation regulations related mainly to market entry and operating conditions.

In February 2018, the CTA published [What We Heard: Summary of Input Received on the Modernization of Air Transportation Regulations](#). The submissions and advice received during the consultations indicated widespread support for simplifying processes for the approval of licences, code shares, wet leases, and charters, and for increasing minimum passenger insurance levels.

Phase 3: Consumer Protection for Air Passengers

The third phase of RMI consultations will begin within 72 hours of Royal Assent to Bill C-49, if and when the Bill is passed. The CTA is committed to developing air passenger protection regulations that set out a clear, transparent, fair, and consistent set of airline obligations to passengers.

A dedicated website will help anchor the consultations, which will focus mainly on the areas where Bill C-49 creates regulatory authority for establishing minimum standards of treatment for air passengers: flight delays and cancellations, denied boarding (bumping), tarmac delays, damaged or lost baggage, seating of children with parents or guardians, the transportation of musical instruments, and communication.

The consultations will last up to three months. During that time, Canadians will have multiple channels for offering input, including an online questionnaire, written submissions, in-person consultation sessions in eight cities, a videoconference-based consultation, and traveller surveys in 11 airports. The CTA will also be consulting with consumer associations, industry, industry associations and experts such as academics.

Phase 4: Rail Regulations

The fourth RMI consultation phase will deal with rail transportation, and will also begin soon after Royal Assent to Bill C-49, if and when that happens. It is expected that through the RMI, the existing six rail-related

Transportation Modernization Act (Bill C-49)

The Government introduced the *Transportation Modernization Act* (Bill C-49) on May 16, 2017, that proposes to give the CTA the authority to make new regulations to strengthen airline obligations towards passengers. It would also give the CTA new responsibilities related to shipper remedies and the publication of information on the performance of the freight rail system. At the end of fiscal year 2017-2018, Bill C-49 had been returned from the Senate to the House of Commons with a number of amendments.

regulations will be combined into a single Rail Transportation Regulation – in the interests of streamlining and clarity – and that outdated references to laws and programs that no longer exist will be removed. The consultations will also consider issues such as:

- what rail-related provisions and orders should be subject to administrative monetary penalties;
- what changes may be beneficial in assessing passenger rail insurance;
- what sort of guidance material would be helpful to stakeholders in the context of Bill C-49's new provisions.

1. 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; and 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 whether suitable Canadian vessels are available when coasting trade license applications are made to use foreign vessels;
- determines railway costs, approves railway 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; and
- 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.

Votre service de résolution de problème est essentiel !

– Dominic

(Request for mediation services re. [Business] and [Rail Company])

Highlights from 2017–2018

WEST VANCOUVER V. CANADIAN NATIONAL (CN) RAILWAY

This dispute related to the Centennial Seawalk, which sits on a CN right-of-way. The Corporation of the District of West Vancouver asked that the Seawalk be authorized as a crossing by the CTA after CN suggested that it could start restricting access to the Seawalk if disagreements around matters such as usage payments by the municipality, insurance, and liability were not addressed. CN contended that the CTA did not have jurisdiction to rule on the application.

Following written pleadings and an oral hearing in October 2017, the CTA ruled that it has jurisdiction to adjudicate the dispute as long as no agreements exist between the parties, and stayed proceedings while the BC Supreme Court considers whether past agreements between the parties are still in force. At the time of writing, CN had sought

leave to appeal the CTA's decision from the Federal Court of Appeal, which was rejected on the basis that the CTA's decision was not final.

DETERMINATION ON OTTAWA RIVER LINE

In February 2018, the CTA determined that the City of Ottawa had effectively discontinued the operation of a portion of its Ottawa River Line , including over the Prince of Wales Bridge , without complying with the mandatory discontinuance process set out in the *Canada Transportation Act*. The CTA ordered the City to either restore the Ottawa River Line and the Prince of Wales Bridge to a point where it could be made operable within 12 months to achieve compliance with railway company obligations (such as allowing another company to use the line if it obtained a "running rights" order from the CTA) or to undertake the discontinuance process.

MEMORANDUM OF UNDERSTANDING WITH MEXICO'S RAIL TRANSPORT REGULATORY AGENCY

In February 2018, the CTA and Mexico's Rail Transport Regulatory Agency signed a [Memorandum of Understanding](#) (MOU) committing their organizations to share information and best practices related to the discharge of their adjudicative and regulatory mandates, and developments in rail transportation.

Complementing last year's MOU between the CTA and the United States' Surface Transportation Board, this agreement will reinforce engagement between three rail regulators, which is consistent with the integrated, continental nature of the North American rail industry.

AIR LICENSING ACTIVITIES

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

In 2017–2018, new scheduled international licences were issued for services between Canada and the following countries:

Country	Canadian airline
Tanzania	Air Canada
Saint Vincent and the Grenadines	Air Canada
Colombia	CargoJet Airways Ltd.
United States of America	Flair Airlines Ltd.
United States of America	Harbour Air Ltd.
United States of America	Tantalus Air Ltd.

In 2017–2018, the CTA analyzed 20 licence applications by Canadian air carriers which required a determination of whether Canadian ownership requirements were met. After confirming that the applicants met the requirements, the CTA approved all applications, including from 13 first-time applicants.

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.

In 2017–2018, CTA staff participated in negotiations resulting in new air transport agreements with Thailand and Cameroon. CTA staff also participated in negotiations that expanded Canada's existing air transport agreements with Morocco, Israel, Qatar, and South Africa.

CTA staff participate as subject matter experts on Canadian legislative and regulatory requirements, given the CTA's role as a designated aeronautical authority for Canada. As aeronautical authority, the CTA 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

The CTA issues a certificate of fitness – essentially, a licence to operate – to a railway company that meets legislated conditions. For a railway company that conducts freight operations, those conditions include holding a minimum level of third party liability insurance coverage (including through self insurance), which depends upon the type and volume of dangerous goods (i.e., crude oil and toxic inhalation hazards) to be carried. A railway company that holds a certificate of fitness must submit annually a certificate of compliance, certificate of insurance, and a dangerous goods volume report, which facilitate ongoing compliance monitoring by the CTA.

If it is determined that a railway company does not have the necessary third party liability insurance coverage, the CTA must suspend or cancel its certificate of fitness. In addition, a CTA enforcement officer can issue a fine of up to \$100,000 for a violation of the Act, such as a failure by the railway company to notify the CTA of a change to its insurance coverage.

The legislated minimum liability insurance levels are as follows:

Volumes per calendar year	Amount per occurrence
None of the situations described below	\$25,000,000
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	\$100,000,000
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	\$250,000,000
At least 50,000 tonnes of TIH materials or at least 1.5 million tonnes of crude oil	\$1,000,000,000

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

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 2017, the CTA ruled that CN and CP exceeded their maximum revenue entitlements for crop year 2016–2017.

Company	Entitlement	Grain revenue	Amount above (\$)
CN	\$802,440,043	\$808,213,784	+\$5,773,741
CP	\$724,378,501	\$725,457,448	+\$1,078,947

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](#)

RAILWAY LINE CONSTRUCTION -- GUIDANCE DOCUMENT CONSULTATIONS

In March 2017, the CTA launched a consultation on two draft guidance documents related to railway line construction: a guide on applying for CTA 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 federally-regulated railway line. The CTA is currently reviewing the comments received and will finalize the guide in 2018.

The framework will outline how the duty to consult Indigenous peoples will be discharged if a possible rail construction approval or other CTA action has the potential to affect Indigenous rights or interests. In addition to reviewing the comments received during the consultations, the CTA is also revising the framework to reflect principles drawn from two recent Supreme Court of Canada judgments in , *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* (2017 SCC 40) and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.* (2017 SCC 41), before finalizing the framework.

DISPUTE RESOLUTION -- RAIL

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

30 rail disputes were resolved in 2017–2018:

- 16 through facilitation
- 8 through mediation
- 5 through adjudication
- 1 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.

Rail level of service arbitration can be initiated by shippers to establish a service contract following unsuccessful contract 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 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.

In 2017–2018, the CTA did not receive any requests for rail level of service arbitration.

Rates 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 the CTA's roster. If the parties cannot agree on an arbitrator, the CTA will appoint one. Rate arbitrations use the final offer selection model, whereby 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 one year.

In 2017–2018, the CTA referred one case for final offer arbitration.

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 an order of the CTA.

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*, marine transportation between points in Canada can only be provided by Canadian companies, unless a special licence is issued by the Minister of Public Safety and Emergency Preparedness.

The CTA plays a role in the exemption process by determining whether suitable Canadian vessels are available when applications are made to use foreign vessels for domestic commercial marine activities.

In 2017–2018, the CTA received 102 coasting trade applications where no offer to use a Canadian vessel was made. Of those applications, eight were withdrawn.

Canadian marine shipping companies contested 22 coasting trade applications. In two of those cases, the Agency determined that a Canadian ship was available and suitable to perform the activity instead of the proposed foreign ship.

RISK-BASED COMPLIANCE MONITORING MODEL

The CTA is committed to ensuring effective monitoring and enforcement of industry compliance with legislative and regulatory provisions, which is in the interests of travellers, shippers, and the transportation companies that follow the rules and should not face unfair competition from those who do not.

The CTA is developing a new methodology for data-driven, risk-based compliance monitoring and enforcement that will allow it to target finite compliance resources towards situations where the likelihood and/or impacts of non-compliance are higher. The methodology has been piloted for compliance activities related to the air sector and will be extended to the compliance program for other sectors during 2018-19.

2. 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.

To implement this mandate, the CTA:

- creates regulations 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; and
- resolves disputes about accessibility through facilitation, mediation or adjudication.

The CTA's legislative mandate with respect to persons with disabilities is found in Part V of the *Canada Transportation Act*, which contains a regulation-making authority and a complaint adjudication authority, both for the express purpose of removing undue obstacles to the mobility of persons with disabilities from the federal transportation network.

Highlights from 2017–2018

A MORE ACCESSIBLE CANADA

The CTA is working towards making the national transportation system the most accessible in the world. Any measures taken to achieve this goal must be specific enough to achieve real results, but neither so prescriptive that they stifle innovation, nor so onerous that they impose undue hardship on service providers.

Many physical and attitudinal barriers to equal access remain. Accessible transportation for Canadians with disabilities is necessary to get from home to work, to move between cities and towns, to visit other countries, and to achieve full and equal participation in contemporary life.

Wherever possible, the goal should be universal accessibility, not after-the-fact individual accommodation. For example, when facilities are built or renovated and equipment is procured or refurbished, making them as accessible as possible, to as many people as possible, should be a top-of-mind consideration.

The CTA's work to advance the goal of accessible transportation includes the regulatory modernization described earlier in this report, compliance and dispute resolution activities, leadership of the Accessibility Advisory Committee and the CTA's role in the international arena.

The CTA will host a forum on June 12-13, 2018 that brings together technical experts, disability rights organizations, aircraft and mobility aid manufacturers, and airlines for a discussion of ways to facilitate and improve the carriage of mobility aids on aircraft.

ACCESSIBILITY APPLICATIONS

The CTA resolves complaints about the accessibility of the federal transportation network on a case-by-case basis. This year the CTA continued to receive an increased number of accessibility-related complaints.

98 accessibility cases were resolved in 2017–2018:

- 78 through facilitation
- 7 through mediation
- 13 through adjudication

ENFORCEMENT ACTION: OC TRANSP0

In December 2017, the CTA issued an Administrative Monetary Penalty (AMP) in the amount of \$25,000 against the City of Ottawa's public transit system, OC Transpo. The penalty was in relation to the failure of OC Transpo to call out bus stops, as required by previous CTA decisions. The failures were found during inspections, following complaints received by the CTA.

The penalty amount, the maximum permitted, reflects the fact that this is the third occurrence of the same contravention in an eight-year period.

VIA RAIL ACCESSIBILITY DECISION

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 applicants both need scooters as a result of disabilities and have experienced difficulties travelling with VIA. In their application, they submitted that VIA's policy was ineffective, as it required storing one scooter in the wheelchair tie-down area within the passenger compartment and the other scooter in the baggage module.

The CTA issued a decision on February 15, 2017 finding that an obstacle existed and ordering VIA to provide more guidance to its personnel and to explore the options of storing two scooters in one tie-down area or ensuring that each train has more than one-tie-down area, unless it wished to claim that these measures would cause it undue hardship.

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.

At the time of writing, the CTA was deliberating on the matter.

THE ACCESSIBILITY ADVISORY COMMITTEE

For advice on accessibility issues, the CTA consults its Accessibility Advisory Committee, made up of representatives from the community of people with disabilities, the transportation industry and other interested parties.

The CTA's Accessibility Advisory Committee (AAC) – which includes representatives of disability rights organizations and transportation service providers -- helps the CTA develop accessibility-related regulations, guidance material, and approaches. One focus of last year's June AAC meeting was the CTA's report on consultations regarding modernized accessible transportation regulations: [What We Heard Summary Report on Accessible Transportation](#).

ACCESSIBILITY PRINCIPLES FOR INTERNATIONAL AIR SERVICES

The CTA is seeking to advance the adoption of common, modern accessibility principles and standards for international air travel by the International Civil Aviation Organization (ICAO). Such standards will help advance accessibility for Canadians with disabilities when they travel abroad, while improving regulatory alignments between countries and therefore reducing compliance complexity and costs for industry.

INCREASING COOPERATION WITH THE CANADIAN HUMAN RIGHTS COMMISSION

The CTA 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.

In September 2017, the CTA's Chair and CEO and the CHRC Chief Commissioner, Marie-Claude Landry, signed an updated Memorandum of Agreement that strengthens collaboration and coordination between the two organizations, fosters complementary policies and practices.

3. Providing consumer protection for air passengers

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

The CTA implements this mandate in part 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.

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 an issue may exist, the CTA uses 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 of 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.

I must acknowledge when a system works well - It was very easy to start a complaint through the Canadian Transportation Agency website. I was immediately given a case number and the ability to follow the progress of my claim through out the process. The Facilitators were very helpful and understanding of my concerns. I am very glad this Agency is there to assist Canadian travellers."

– Darryn Chidley

Highlights from 2017–2018

UNPRECEDENTED RISE IN AIR TRAVEL COMPLAINTS

More than 5,500 Canadians filed air travel complaints with the CTA in 2017-18, an increase of 950% since 2012. The rise in complaints began during the fall of 2016, when the CTA began modest public information efforts to help make Canadians aware of their rights as air passengers and ability to seek recourse through the CTA for issues that cannot be resolved directly with an airline.

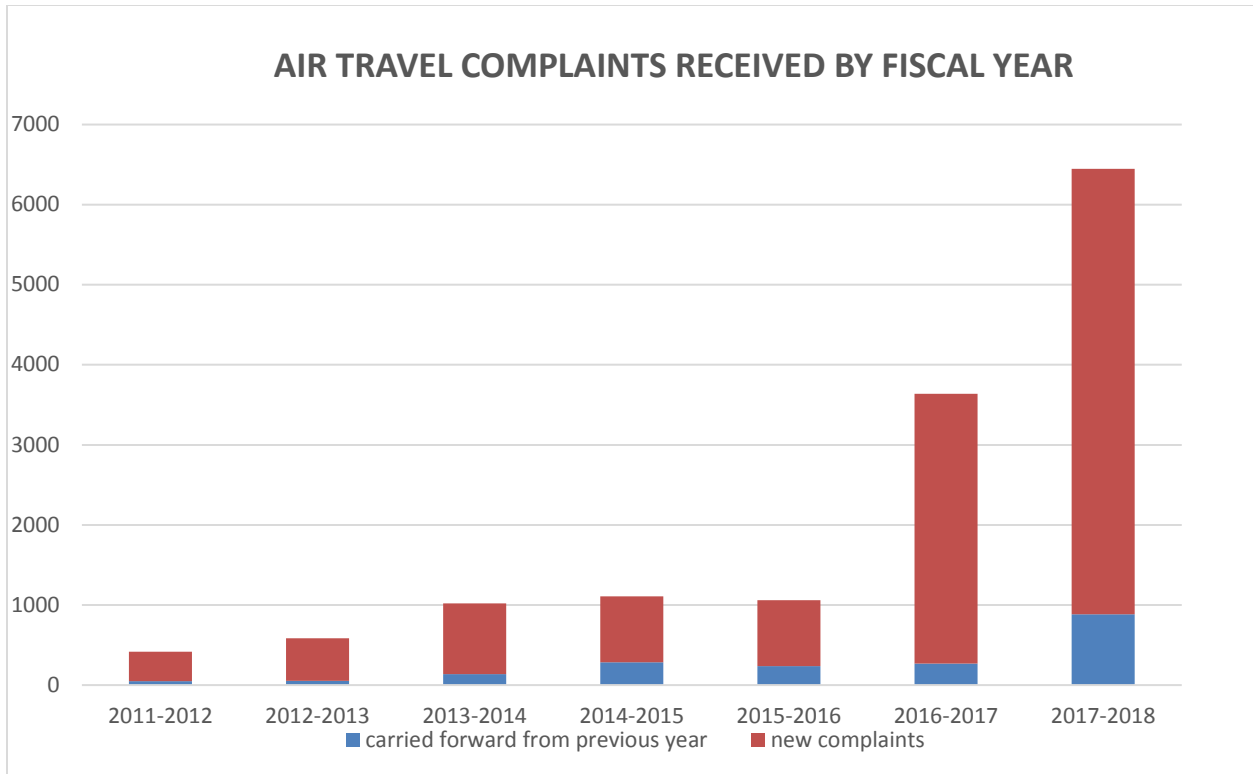
Of all air travel complaints resolved, about 93 per cent were resolved through facilitation – a quick, straightforward process where a CTA employee works informally with the airline and applicant. Another 3 per cent are resolved through slightly more structured mediation discussions, which can be conducted by phone, by videoconference, or in person. The remaining 4 per cent were resolved by adjudication or inquiry, at the end of which a binding decision is issued by one or more CTA Members.

This is to confirm that [the airline] have issued the ecoupon to me. I also wish to thank you and others at CTA for the effort you put into this problem on my behalf. Appropriately it happened on my 77th birthday.

– Anthony Cook, FRAIC

Thanks again for helping with this, good to know the consumer has some rights and support out there, much appreciated.

– Mr. Farrell



AIR TRANSAT INQUIRY

In August 2017, the CTA launched an inquiry into the circumstances surrounding the delay of two Air Transat flights, which spent several hours on the tarmac of the Ottawa Macdonald-Cartier International Airport on Monday, July 31, 2017. According to media reports at the time, passengers on the flights were not able to disembark, air conditioning on the aircraft was unavailable, external temperatures went as high as 28°, and drinking water and food supplies were depleted.

In ordering the airline to explain the events around the delay, the CTA questioned whether, during the incidents, Air Transat respected its terms and conditions of carriage for international flights (tariff) with respect to the treatment of passengers on the aircraft.

The CTA used its authority under the *Canada Transportation Act* to launch an inquiry, on its own motion, related to Air Transat's international tariff.

After receiving a submission from Air Transat that stated "a confluence of factors beyond its control" had caused the events in question, the CTA decided that an oral hearing would be the best way of getting to the facts. The CTA held oral hearings August 30 and 31, 2017 to hear from and question witnesses. Given the high level of public interest in the case, the hearing was webcast.

On November 30, 2017, the CTA issued its [determination](#) in the matter.

In its determination, the CTA found that during the tarmac delays, Air Transat did not properly apply the terms and conditions of carriage of its tariff related to passenger disembarkation and to the distribution of drinks and snacks.

The CTA also found that the air carrier was not relieved of its obligations to passengers simply because events beyond its control required diversion of the flights to Ottawa or because the actions of other parties contributed to the length of the delays.

Finally, the CTA found that it was unreasonable for the tariff's *Force Majeure* rule to be as broadly worded as it was, and for pilots to have such wide discretion to decide whether to allow passengers to disembark, no matter how lengthy the tarmac delay.

Based on the findings, the CTA ordered Air Transat to compensate all passengers of the two flights for out-of-pocket expenses incurred as a result of the carrier's failure to apply its tariff. The CTA also ordered Air Transat to ensure that its employees are properly trained on tariff provisions, policies, and procedures related to tarmac delays, and that employees understand these are legal obligations.

In addition, the CTA ordered the airline to tighten the definition of *Force Majeure* in its tariffs and to amend its international tariffs to incorporate the terms and conditions of its Contingency Plan for Lengthy Tarmac Delays at US Airports, which create a positive obligation for the air carrier to deplane passengers if a tarmac delay reaches four hours – unless there are safety, security, or air traffic control issues that prevent it – and require that during the delay, the air carrier provide passengers with updates every 30 minutes, working lavatories, and needed medical assistance.

Following this determination, a CTA Designated Enforcement Officer issued a penalty of \$295,000 against the air carrier. Air Transat was advised that the penalty amount might be adjusted by an amount equivalent to any compensation provided to passengers on the affected flights, excluding the refund of out of pocket expenses.

ENHANCED OUTREACH

The CTA has continued its efforts to increase passengers' awareness of their rights and responsibilities and the CTA's services. The CTA communicates through traditional as well as social media, publications and announcements. Highly publicized

I can't thank you and the Canadian Transportation Agency enough for becoming involved in our case. I truly believe that without your help we would still be trying to resolve our flight issues with [the airline]. You definitely helped to get the ball rolling again....Thank you so much!!!

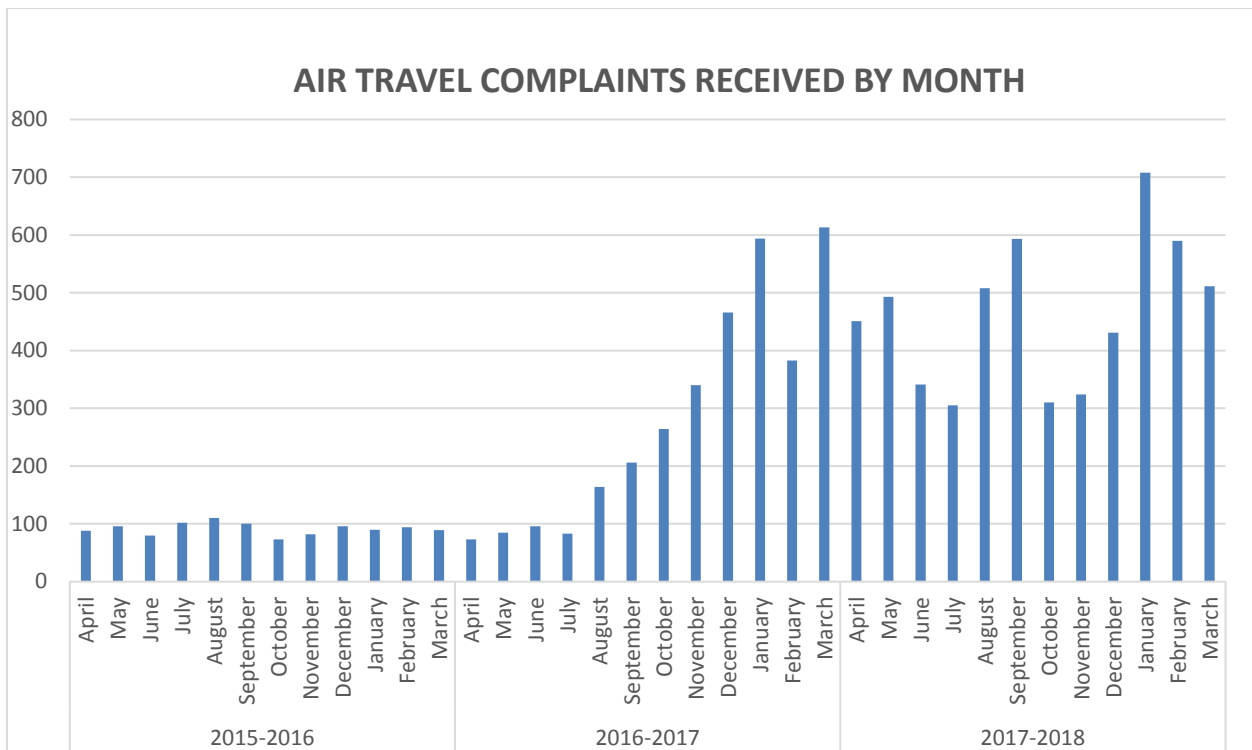
– Margaret Moroz and Donald Hope

incidents involving airlines as well as weather events also turn a spotlight on CTA services available to passengers.

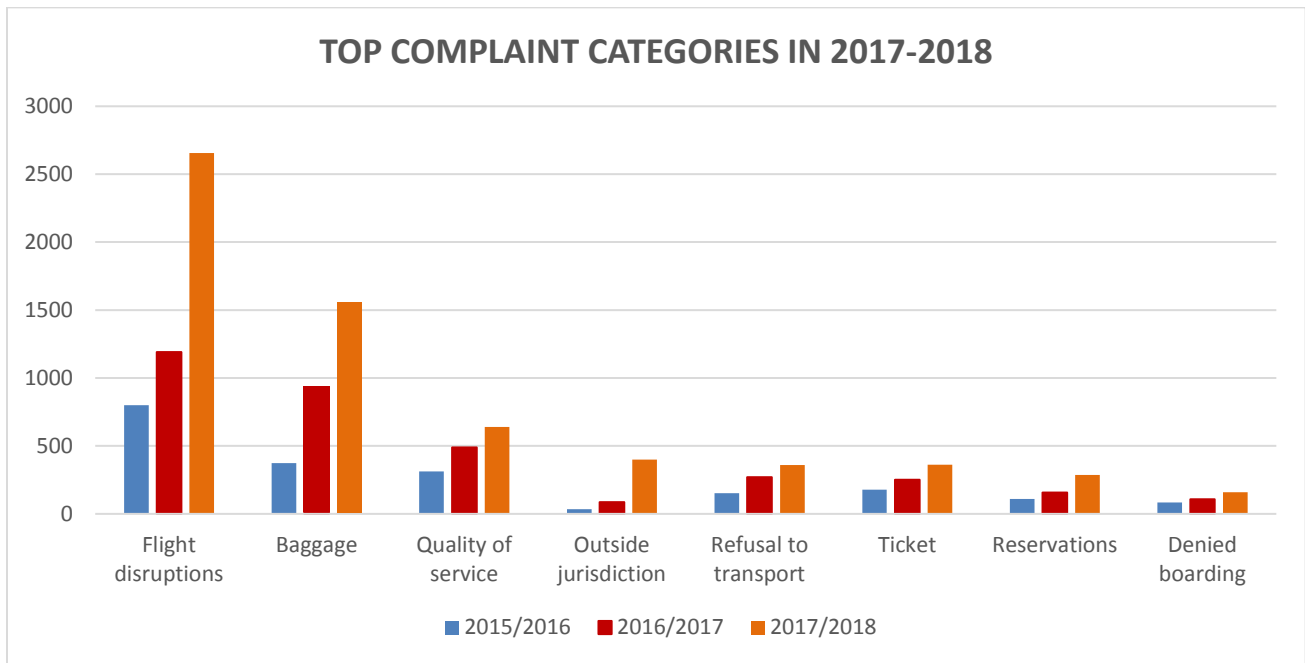
This past year, the CTA has provided information and services to many air travellers in Canada and across the globe. This included individuals stranded during the hurricanes in the Caribbean and the United States, delayed during airport construction, and affected by flight disruptions.

And thank you to the CTA for making this mechanism and the skilled mediator available as an alternative dispute resolution process for all parties – clearly it has much value.

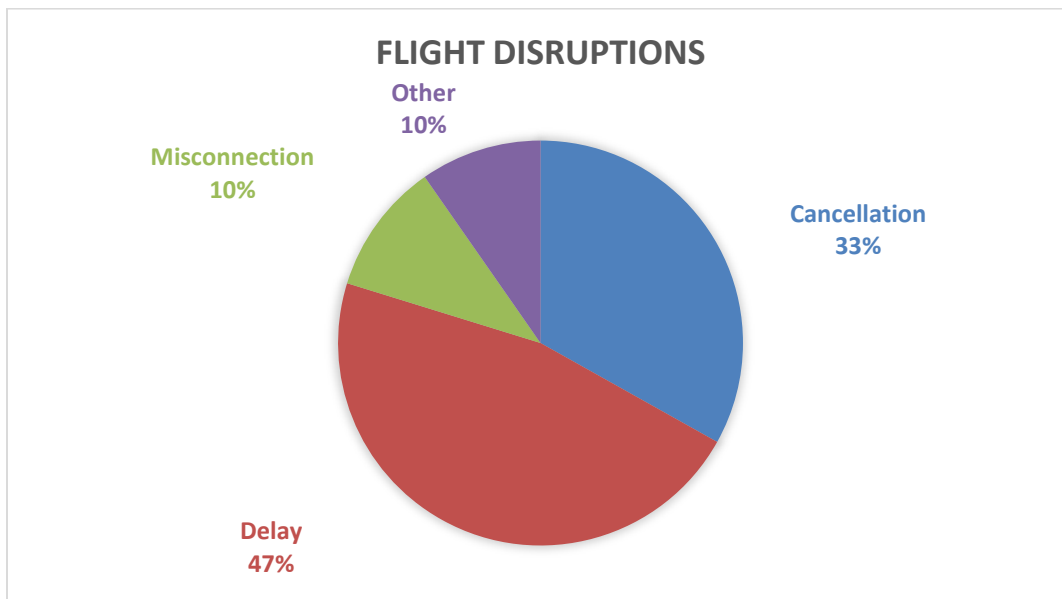
– [Airline representative]



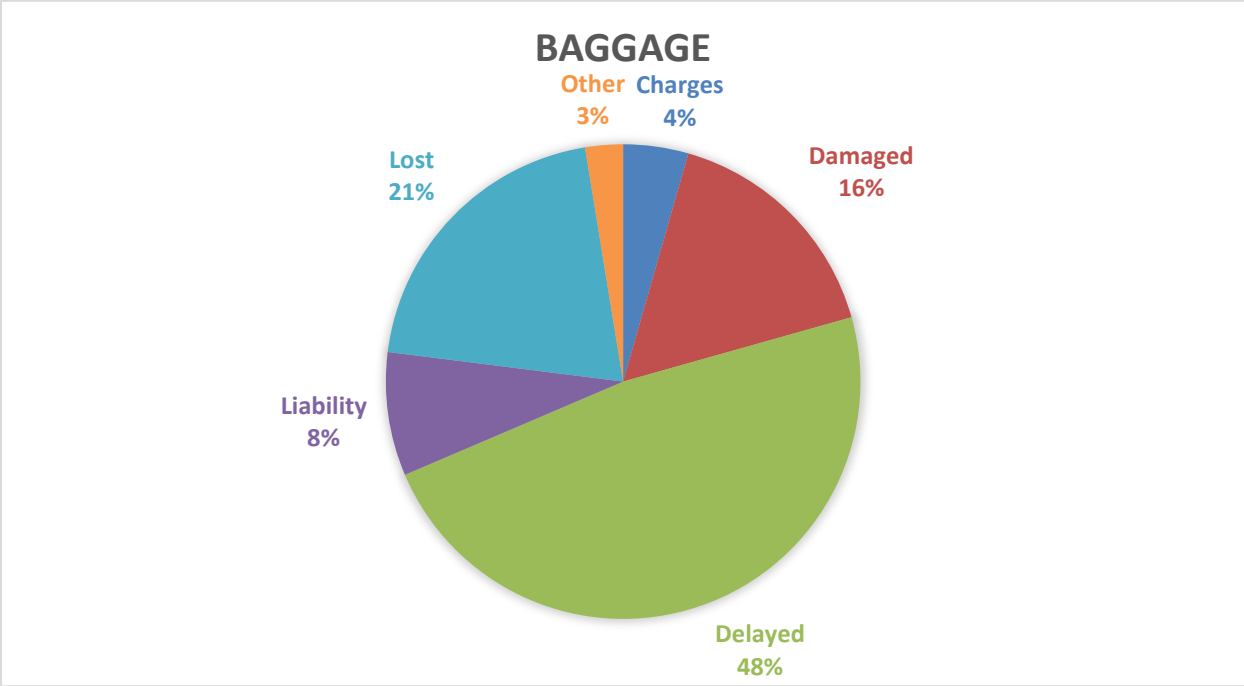
COMPLAINT ISSUES AND TRENDS



During the past fiscal year, complaints related to flight disruptions more than doubled, while baggage-related complaints increased by almost 60%.



Nearly half of the flight disruption complaints received by the CTA are related to flight delays. One third of flight disruption complaints are related to flight cancellations, while the remaining complaints are related to misconnections and other issues such as re-routing and schedule changes.



Baggage-related complaints made up nearly a quarter of complaints received by the CTA in 2017/2018. In nearly half of all cases, baggage-related complaints are due to baggage arriving late to its destination. One fifth of baggage complaints handled by the Agency are related to lost baggage. Damaged baggage claims make up 17% of baggage-related complaints.

I would also like to take this opportunity to thank [the mediators] for their kind and empathetic approach in handling this situation. You made this a very transparent and a fruitful process for both the parties. Thank you.
 Once again, I wish you and your team the best for all your future endeavours.

– Chitwan Khosla

RECENT CTA DECISIONS OF NOTE RESOLVED THROUGH ADJUDICATION

Cuthbert v. Air Canada

In February 2018, the CTA issued a decision where it found that the amounts offered by Air Canada as denied boarding compensation from international points to Canada, as set out in the terms and conditions of Air Canada's international tariff, were unreasonable.

The decision stemmed from a complaint made against Air Canada and filed with the CTA by Jeffrey Cuthbert, who argued that Air Canada's denied boarding compensation for flights originating in Costa Rica and destined to Canada were unreasonable and did not respect the order made by the CTA in Decision No. 71-C-A-2017 – including that Air Canada, by June 13, 2017, compensate each of the applicants in the amount of CAN\$1,350. After considering the matter, the CTA found that Air Canada's denied boarding compensation for flights departing from international points to Canada (except where foreign legislation applies), needs to be the same as the amount it provides for flights departing from Canada to international points. The CTA also found that when travel vouchers are offered in lieu of cash compensation, they should be three hundred percent of the amount of the cash compensation equivalent.

As a result this decision, the amounts offered by Air Canada as compensation for denied boarding from international points to Canada now range from \$400 to \$800, depending on the length of the delay.

I just wanted to let you know that both my wife and I have been very impressed with the work that [your staff member] did on a lost baggage claim with [the airline]. The airline lost our bag on the outbound leg of a trip to South Africa. It was located, but was lost or stolen again in South Africa. [. . .] We filed a claim with the Canadian Transportation Agency and were not optimistic about the outcome. [your staff member] did an excellent job of gathering the information she needed and representing us with [the airline]. She followed up and kept us informed at every step of the way. Ultimately, we received a cheque for just over \$2000.

In my mind this is excellent customer service and would be comparable to that I might hope to receive from a leading company like Nordstrom or Amazon. [She] is to be congratulated on her work.

– Adrian

Diogo v. Air Portugal (TAP)

In December 2017, the CTA issued a decision where it found the terms and conditions of TAP's tariff to be unreasonable.

The complaint filed with the CTA alleged that TAP's tariff was unreasonable because it allowed TAP to issue a single ticket on a code share itinerary where TAP does not operate a portion of the routing, and the carriers that do operate the flights do not share a ticketing agreement with one another, thereby preventing through check-in. Through check in enables passengers who are travelling on a single multi-segmented ticket to check-in for all of their connecting flights, from place of departure to place of destination, in one transaction. In this case, the passengers missed their connection, experienced considerable travel delays and expense, and said that the airlines (marketing and operating) were reluctant to assume any responsibility for providing assistance. The CTA found that the arrangement in question undermined the seamless travel principle of code-share transportation.

As a result of this decision, TAP amended its international tariff to include a through check-in policy, which sets out the rights and obligations of the passenger and the carrier in situations such as these.

À la suite du remboursement en trois chèques reçus en des périodes différentes (\$64+\$616.05+\$524.80)+\$200(coupon promis) du [transporteur aérien] et ce, après un long processus d'échanges de courriels éreintants, je suis finalement en mesure de vous présenter ma satisfaction de la résolution de ma plainte avec [transporteur aérien]. Je viens de communiquer avec une agente de la compagnie concernant le remboursement obtenu grâce à l'appui de l'Office des transports du Canada. Voilà pourquoi je profite de l'occasion pour remercier l'Office des transports du Canada d'avoir pris ma plainte en considération jusqu'à ce que justice me soit rendue. La démarche était longue mais ça valait la peine.

Veuillez recevoir mes vives félicitations pour l'excellent travail effectué en tant que facilitateur du processus de remboursement.

– Robert Jean

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

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

Assessment of the Act

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

The CTA is required to report on the operation of the Act – and any difficulties observed in its administration – through its Annual Report. We have observations in five key areas: (1) ensuring industry compliance; (2) facilitating the timely modernization of regulations, rules and guidelines; (3) streamlining CTA processes; (4) providing greater access to justice; and (5) responding more effectively to systemic issues in the transportation network.

Promoting Industry Compliance

In order to ensure the Act is working as intended, that transportation services are efficient and accessible, and that there is a level playing field for transportation service providers, it is important that the CTA has effective tools in place to ensure industry's compliance with the Act's requirements and CTA orders. For example:

- The maximum administrative monetary penalty (AMP) that can be levied for a violation of the Act or an order is \$25,000 – an amount established many years ago. Increasing this amount would better reflect today's economic realities and compliance practices;
- There is no requirement for a railway company, airline, or other transportation service provider to respond when a user of its services – such as a shipper or passenger – seeks CTA mediation or facilitation. A formal obligation for industry to respond and engage in discussion would support efforts to resolve disputes informally; and
- Shippers using freight rail services have advised they are reluctant to use remedies, such as level of service and final offer arbitration, due to a fear of retaliation from railway companies. A clear prohibition on retaliation – enforceable by an AMP should a CTA investigation establish such conduct occurred – would help ensure legislated remedies can be accessed in the ways Parliament intended.

Facilitating modernization of regulations, rules and guidelines

As a quasi-judicial tribunal and regulator of the national transportation system, the CTA must be responsive to changes in industry practices and new developments. This means that the CTA requires appropriate flexibility to update its suite of regulations, rules and guidelines.

Amendments to the Act would ensure that the CTA could make much-needed regulatory changes – including new regulations needed to address emerging issues or address specific concerns; efficiently issue and update rules of procedure so that proceedings, such as the adjudication of complaints from shippers or air passengers,

run smoothly; and develop meaningful guidance material that supports the resolution of disputes informally and ensures that remedies fully work as Parliament intended. For example:

- a general provision allowing the CTA to make regulations for matters under its jurisdiction would bring greater clarity and predictability to regulations, remove unnecessary complexity from the legislation and help ensure the efficient administration of the Act;
- the ability to issue rules of procedure more quickly would ensure the CTA can provide much-needed guidance to stakeholders, including on new shipper remedies that Parliament has legislated;
- formal authority for the CTA to issue guidelines would improve stakeholders' understanding of CTA remedies, and promote commercial solutions in line with section 5 of the Act, the National Transportation Policy.

Streamlining Agency Processes

With increasing legislative responsibilities and growing complaint volumes, it is important that the CTA be as efficient as possible. Much-needed changes to the Act would allow the CTA to operate more nimbly, better serving stakeholders and minimizing cost to the taxpayer. Such amendments would, for example:

- provide the CTA the ability to delegate certain regulatory and routine matters to staff, to speed up decision-making and better use resources;
- streamline the AMP review process, to minimize costs to taxpayers and applicants; and
- provide the CTA with the ability to issue general orders when a single matter applies to multiple parties, to alleviate the burden on members of the public, shippers and other stakeholders of applying for individual orders in similar cases, and to eliminate duplicative proceedings at the CTA.

Providing greater access to justice

The CTA has identified changes to the Act that are critical in order to promote access to justice for persons with disabilities. Key amendments would:

- provide the CTA with a clearly-defined and exclusive mandate over accessibility in the federal transportation network and eliminate the potential for duplicative processes at different tribunals. Duplicative processes can waste both private and public resources, be procedurally unfair, and cause confusion;
- ensure that the CTA, like other bodies administering human rights legislation, has the authority to award damages for pain and suffering; and
- provide the CTA the ability to award intervener and participant funding, to ensure that persons with disabilities can fully participate in hearings.

The third of these changes would also provide better access to justice for Indigenous communities when matters before the CTA, such as an application for approval to construct a new railway line, may have an impact on Indigenous rights and interests.

Better responding to systemic issues in the transportation network

Through its dispute resolution services and its regulatory role, the CTA is well-positioned to identify early signals of broad issues that are occurring in the transportation system. Examples might include backlogs in the freight rail network, a pattern of troubling treatment of air passengers by one or more airlines, or a systemic barrier to travellers with a particular disability.

With own motion authority, the CTA could respond in a more timely and effective way when it has grounds to believe a broad issue may exist. Key amendments would extend the CTA's current authority to initiate investigations on its own motion – which only applies to international air travel matters – to other areas.

These amendments would have a number of benefits:

- ensuring a consistent approach to remedying industry-wide or otherwise systemic issues;
- alleviating the burden on members of the public, shippers and other stakeholders to make individual applications regarding the same issue; and
- eliminating duplicative CTA proceedings and the associated costs.