

***IN THE MATTER OF THE CANADIAN TRANSPORTATION  
AGENCY'S REGULATORY MODERNIZATION INITIATIVE,  
ACCESSIBLE TRANSPORTATION, PHASE II (ATPDR)***

**Submission filed with the  
Canadian Transportation Agency**



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Montréal, February 28, 2020

By email: marcia.jones@otc.cta.gc.ca

Ms. Marcia Jones  
Chief Strategy Officer  
Canadian Transportation Agency

Subject: Emotional Support Animal Beings and service animal beings other than dogs

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Dear Ms. Jones,

Further to the Agency's invitation to provide comments on the question of Emotional Support Animal Beings and service animal beings other than dogs, VIA wishes to submit the follow information. First, it is important to note the new legal framework and new legal status of animal beings in Québec with respect to the constitutional distribution of legislative powers concerning this question.

### Québec's Civil Code

In December 2015, Québec's Civil Code was modified to include the following new article:

*"898.1. Animals are not things. They are sentient beings and have biological needs.*

*In addition to the provisions of special Acts which protect animals, the provisions of this Code and of any other Act concerning property nonetheless apply to animals."*(underline added for emphasis)

With respect to the 2<sup>nd</sup> paragraph, the provisions concerning property apply nonetheless. This does not mean however, that animal beings are property. On the contrary, the owner of a real right over an animal being (2<sup>nd</sup> paragraph) must exercise those rights in conformity with the provisions of the 1<sup>st</sup> paragraph that is:

- a) Animal beings are not property and cannot be treated as a "thing" by the passenger,
- b) Animal beings are sentient and therefore will react, if not properly trained by the passenger, and
- c) Animal beings have biological needs that must be met at all times by the passenger.

In order words, an Emotional Support Animal Being cannot be treated as a "thing" by their owner in their interaction with the animal being during their travel. The Emotional Support Animal Being is sentient and has biological needs which are defined as follows under *Québec's Animal Welfare and Safety Act*:

Section 1(5) “**biological needs**” means the basic physical, physiological and behavioural needs related to such factors as the animal’s species, race, age, stage of growth, size, level of physical or physiological activity, sociability with humans and other animals, cognitive abilities and state of health and those related to the animal’s capacity to adapt to the cold or heat or to bad weather;

## Québec’s Animal Welfare and Safety Act

In December 2015, the Animal Welfare and Safety Act also came into effect. The preamble of this law provides that:

*AS the human species has an individual and collective responsibility to ensure animal welfare and safety;*

Section 13 provides as follows:

*“13. No person may in any way hinder a personal service animal with a view to hampering it, including by touching it directly or indirectly or by blocking its way. The same holds for a service animal while it is assisting a peace officer in the performance of the officer’s duties.*

*For the purposes of the first paragraph, a “personal service animal” means an animal that is needed by a handicapped person to assist the person and that has been **certified as having been trained for that purpose by a professional service animal training organization.**” (underlines, bold added)*

This new legal framework must therefore be part of a regulatory regime so that both the safety and well-being of the animal being are ensured.

## VIA’s Current Practices

- 1) Therapy animal beings, in contrast to service animal beings, are not always professionally trained. Passengers wishing to travel with a therapy animal being are required to provide VIA with the following information:
  - (a) A note from a licensed medical doctor or licensed mental health professional that prescribes the assistance of an animal being for the passenger and that such assistance is required in order for the passenger to travel; and
  - (b) Agreement in writing from the passenger that the passenger shall, at all times,
    - i) Maintain control of the animal being; and

- ii) Keep the animal being on a leash, harness or tether, unless this would interfere with the safe and effective performance of the animal being's work or tasks, in which case the animal being must be otherwise controlled; and
  - (c) A Health Certificate for therapy animals beings signed by a veterinarian, at the passenger's cost. This certificate will attest that the animal being is fit for travel. It would be valid for a period of one year. This policy will ensure the health and safety of all persons and other animals beings travelling on board (ex. service dogs, guide dogs and pets).
- 2) VIA permits passengers with disabilities to be accompanied on their trip by a certified service animal being or properly documented therapy animal beings at no extra charge.
  - 3) From a procedural perspective, in the case of either a service animal being or a therapy animal being, the appropriate documentation must be sent to VIA's Customer Center in accordance with VIA's "One person, one fare" policy, preferably at least forty-eight (48) hours in advance of the date of travel.
  - 4) Once this documentation is received by VIA's Customer Center, a note will be added to the passenger's preference profile that the appropriate documentation has been received. A Special Service Request can then be initiated by the passenger with VIA's Customer Center to request that an accompanying service or therapy animal being be added to their reservation. Requests for travel with therapy animal beings are, on occasion, escalated to VIA's Customer Relations department for further processing.
  - 5) VIA is committed to accommodating a passenger's needs, and will accept other domesticated animals under certain conditions:
    - a) The weight of the animal being should not exceed 15kg;
    - b) The animal being must be a fully mature animal (i.e. not a kitten or a puppy);
    - c) The animal being must be sterilized and have a microchip ID implant;
    - d) The animal being must not carry a disease that can be transmitted to humans or contaminate food service;
    - e) Tusked or hooved animal beings, as well as animal beings falling within certain enumerated classes are not be accepted<sup>1</sup>.
    - f) Service animal beings that are considered "dangerous breeds" (e.g. pit bulls) are not permitted;
    - g) The animal being must be clean and must not carry a strong or foul odor;
    - h) During travel on VIA's facilities, the animal being must be leashed, harnessed, or tethered in some other fashion;
    - i) The animal being must be attended to at all times in a station and while on board the train; no animal being may be left unattended in any public or private area, in a washroom or in a private cabin;
    - j) The animal being must remain on the floor; animals must sit under the passenger's seat, or on the passenger's feet; the animal being is not however, allowed to sit in the aisle or on seats;

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<sup>1</sup> VIA does not accept any of the following therapy animals: kittens, puppies, pet rodents (mice, rats, guinea pigs), reptiles, ferrets, hedgehogs, sugar-gliders, mini-pigs, mini horses, snakes, birds, insect or spiders.

- k) In any public area of the train, a service animal being must wear a vest or highly visible collar which identifies the animal as a service animal being (bilingual identification if desirable – English and French);
  - l) Passengers are required to note that there may not always be sufficient time to walk animal beings at the station stops for purposes of relieving; and
  - m) Passengers must carry on their person and have accessible at all times throughout the trip, the vaccination records of the animal being.
- 6) VIA personnel may require the removal of the animal en route to or from the station premises if the animal being is out of control and effective action is not taken to control the animal being (for example, a dog barking repeatedly and uncontrollably, or that is not housebroken), or the animal being poses a direct threat to the health or safety of passengers, employees or other animals beings.
- 7) Where a passenger is asked to remove an animal being, but the passenger intends to carry on with his or her travel plans without the animal being in question, the passenger is responsible for making the necessary arrangements at their own cost to transfer custody and care of the animal being to another person or local Animal Control. Should the necessary arrangements entail delay, the passenger may be required to continue or begin VIA travel at a later time or on a later date.

## **VIA's Regulatory Proposal**

The above seven points should be captured by the new regulation. VIA proposes that the new regulations provide for the acceptance of:

- a) dogs that are service animal beings trained by an accredited organization (as is the case today), and
- b) dogs that are Emotional Support Animal Beings.

In both of these cases, the transportation provider would provide a free seat beside the passenger to free up space for these dogs.

If the Agency contemplates expanding the new regulations to include all Emotional Support Animal Beings, the animal being must remain in a cage or at the feet of the passenger or on their lap, with no additional free seat. This is based on legal framework that the service provider must ensure the safety and well-being of all animal beings. Subjecting a trained service animal being to the behavior of an untrained animal being puts in jeopardy the safety and well being of all animal beings on board: service dogs, emotional support dogs and other animal being species.

All other Emotional Support Animal Beings should be prohibited, unless the transportation provider accepts to develop a formal policy made available to the public.

Finally, there should be a statutory review mechanism of any decision (to accept or refuse) by the passenger or the service provider.