



# Annual Report

2022–2023

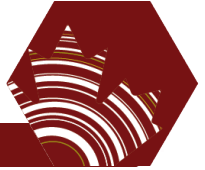


Office  
des transports  
du Canada

Canadian  
Transportation  
Agency

Canada 

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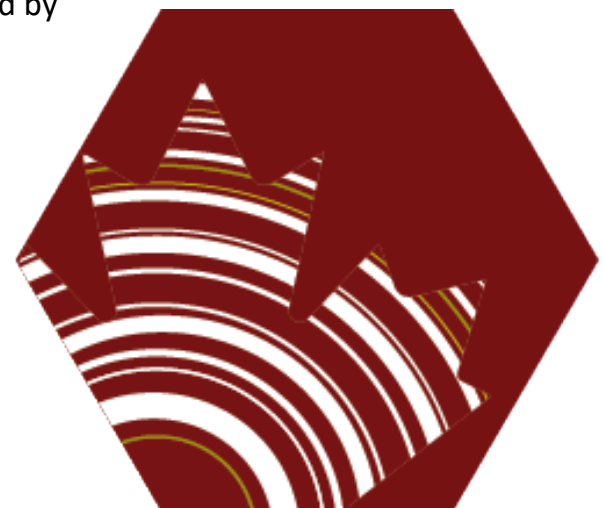
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# Message from the Chair and CEO: Building for the Future



This year, the Canadian transportation industry continued to recover from the COVID-19 pandemic's impacts and adapt to a continuously changing environment. The efficiency of the supply chain continued to be tested, and air passengers submitted complaints to the Canadian Transportation Agency (Agency) in record numbers. The Agency, along with industry, passengers and other government organizations, is part of the transportation system. As such, we had to adapt to this new environment and react to the situations affecting the system to advance efficiency, consumer protection, accessibility and trust in that system. In that context, we have taken deliberate actions using various tools, including providing information and enforcement. Recognizing that the workload of the Agency related to air passenger protections has increased substantially, the Agency has started to put in place the foundation that will enable it to manage such a high volume of complaints more efficiently.

In the rail sector, the Agency launched an enhanced freight rail monitoring program to ensure that the freight rail system performs well in response to shipper demands and exogenous factors such as weather. The Agency will continue to closely monitor the supply chain, bring players together, and, using data, promote a shared understanding of the rail situation.

Accessibility of the transportation system for persons with disabilities was an important theme of our work over the last year. The first wave of accessibility plans required for federal organizations and federally regulated industries have started to be published. These plans will be useful tools to work with industry to advance accessibility in transportation. With an influx of new and returning staff, the transportation sector has a significant opportunity to ensure that its employees are provided quality training on accessibility and that every individual working for a transportation provider is imbued with a culture of respect.

I am proud to say that notwithstanding the increased volume of overall complaints received by the Agency, we have actively prioritized accessibility disputes, resulting in zero backlogs for those cases.

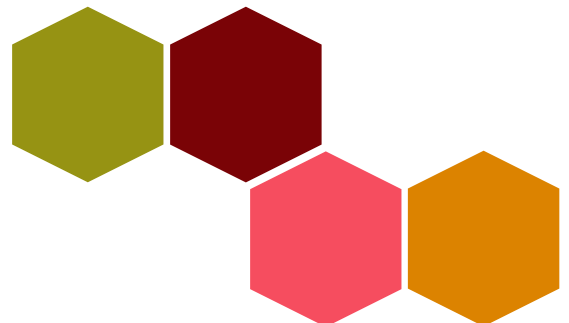
Over the last year, the Agency experienced a record surge in passenger complaints – over 42,000. This volume is almost six times as much as five years ago (7650 received). Let me start by acknowledging the unacceptably long wait times for disputes to be processed with the Agency, and in turn, commit to continue to undertake a comprehensive review of the current processes and lay the groundwork for their modernization in the near future. We have invested significantly in technology to improve our systems and started equipping the Agency to collect and use data better. We have already improved our applicant intake process and have started to decrease processing times. With the announcements made in the 2023 federal budget and the additional funding allocated to the Agency, I do not doubt that we will be in a position to transform our dispute resolution process and ensure it meets the expectations of Canadians and can fully protect the rights of air passengers in a timely matter.

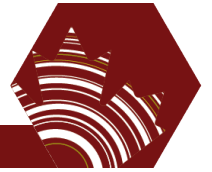
The Agency's new accessible offices were officially opened in January 2023, and we have welcomed employees on-site since then. Diversity, inclusion and well-being are promoted actively in the organization. I want to recognize the various employees participating in committees on Diversity, Wellness and Official Languages for their commitment and leadership, which help make the Agency a great place to work.

I would like to recognize the employees and the appointed Members of the Agency. The Agency and the transportation system have had to adapt to and operate in a rapidly changing environment. The travel industry was returning to pre-pandemic service levels, supply chain challenges were felt worldwide, and the Agency itself was finding and implementing new ways of working to maximize efficiency. This work will continue next year as Parliament will consider changes to the [Canada Transportation Act](#), which will impact the Agency. Given the foundation we have put in place and the quality of our employees and Members, I am confident that we are well positioned to tackle the new challenges and continue improving how we serve Canadians.



France Pégeot





## Our organization

The Agency is an independent, quasi-judicial tribunal and regulator. We oversee the large and complex [Canadian transportation system](#), essential to Canadians' economic and social well-being.

In 2022–2023, the Agency had 294 full-time equivalents with a permanent budget of \$33.1 million and an additional 10.5 million in temporary funding for one year.

## Our legislation and mandates

The [Canada Transportation Act](#) includes the National Transportation Policy, which states that competition and market forces are the prime agents in providing viable and effective transportation services. It also states that regulation may be required to meet public policy objectives that cannot be achieved by competition and market forces alone.

The Agency has specific powers assigned to it under this legislation:

- The Agency is a regulator of modes of transportation under federal jurisdiction. The Agency develops and applies 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 be binding regulations, less formal guidelines, or codes of practice.
- The Agency is a tribunal that hears and resolves disputes like a court. The Agency resolves disputes between transportation service providers and their clients or neighbours, using various tools from facilitation and mediation to arbitration and adjudication.

The Agency's mandates are:

- To 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.

- To protect the human right of persons with disabilities to an accessible transportation network.
- To provide consumer protection for air passengers.

The Agency exercises its powers through its Members, appointed by the Governor in Council, and temporary Members, appointed by the Minister of Transport from a Governor in Council-approved roster. Their responsibilities include:

- approving applications for licences,
- making regulations,
- rendering decisions and orders related to formal complaints or applications,
- authorizing the construction of railways.

## Our Strategic Framework 2021–2024: Proud of our history, ready for the future

The Agency continues implementing a [three-year framework](#) for its priorities, focusing on implementing the new regulatory framework.

### Desired Outcome

In alignment with the National Transportation Policy, the Agency contributes to achieving an accessible, competitive, economic and efficient national transportation system that serves the needs of participants and communities and in which people trust.

### Our Vision

The Agency is a modern, high-performing, outcome-driven organization that uses its expertise in the Canadian transportation system to provide high value to Canadians.

As a regulatory agency, it works with regulated industries, communities, and other participants in the transportation system, using various regulatory and non-regulatory instruments, and will:

- Use the most efficient and effective mix of instruments to achieve results and be innovative in addressing regulatory issues.
- Work with all stakeholders to advance desired outcomes and compliance with legislation and regulations.
- Maintain its current regulatory framework, ensuring its alignment with developments in the transportation system.

As an administrative tribunal, it provides timely dispute resolution services and access to justice based on procedures proportional to the impact and complexity of the cases and will:

- protect its independence,
- have procedures and processes proportionate to a dispute's nature, complexity, and impact,
- inform parties about its processes and ensure they feel heard in their dealings with the Agency,
- continue to develop and maintain its deep transportation expertise.

The Agency is a diverse, inclusive, and equitable organization that works collegially and fosters employee satisfaction and well-being in a renewed work environment.

- We have a workforce that is representative of the Canadian population.
- We create a healthy work environment where every Agency employee feels free to share ideas, learn, and contribute to the best of their abilities.
- Post-pandemic, we will consider the nature of the work and balance the needs of individual employees and the organization in its new accessible office and its return to the workplace strategy.

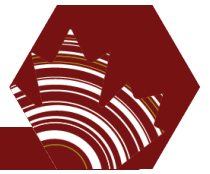
# Our strategic priorities

- Timely resolution and elimination of the backlog of complaints.
- Implementation of the new regulatory framework.
- Process and service innovation and modernization.
- A data-driven, digitally integrated, and proficient organization.
- A diverse workforce and an inclusive and equitable workplace.

Please consult the Agency's [Corporate Reports](#) for more information about its plans, priorities, and results reporting.



# The transportation industry context of our work



Canada's transportation sector faced many challenges during the recent pandemic but has started to recover with substantially higher air and rail passenger traffic levels in 2022–2023.

Over this year, air passengers dealt with significant flight disruptions during peak travel periods. Over the summer travel season, flight delays and cancellations at Canadian airports were among the highest in the world at that time.

Extreme weather events caused further disruption during the peak winter holiday travel period. While airline and airport staffing levels had reached pre-pandemic levels, air carriers and airports remained challenged by extreme weather conditions. As a result, travellers faced extended flight delays and cancellations, leaving many stranded abroad. During this period, air carriers were also criticized for mishandled baggage and inadequate communication with passengers. The Agency launched investigations into tarmac delays, information gaps and airlines' responses to requests for compensation. This action resulted in [issuing important Administrative Monetary Penalties \(AMPs\)](#).

The pandemic, labour disputes, container shortages, the impacts of climate change, and the consequences of Russia's invasion of Ukraine caused significant disruptions to supply chains worldwide. The Government of Canada established a National Supply Chain Task Force to address supply chain challenges. The *Final Report of The National Supply Chain Task Force 2022* was released in October 2022.

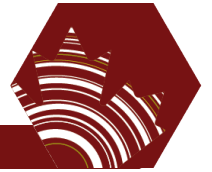
In its report, the Task Force made two recommendations with respect to the Agency:

1. Expand the 30 km interswitch distance across Canada to give shippers more rail options and to address shipper—railway power balance issues; and,
2. Revise the Agency's mandate and provide it with the independence, authority and commensurate funding needed to deliver on that mandate.

The second recommendation aims to provide the Agency with sufficient autonomy and enforcement authority to ensure all parties working within Canada's transportation supply chain have balanced negotiating power.

The interprovincial bus sector still experienced the effects of the pandemic in 2022–2023 as ridership continued to dwindle. Canada's only full-service interprovincial bus line pulled out of the market in 2021. That meant the travelling public had to coordinate among multiple bus carriers to travel between provinces.

The Government of Canada continued to reinforce its commitment to advancing accessibility and the inclusion of persons with disabilities. It announced the appointment of Canada's first Chief Accessibility Officer and Accessibility Commissioner, who will be key partners for the Agency in realizing the goals of the [Accessible Canada Act](#). Barriers to transportation continue to exist, and in particular, during flight disruptions over the summer of 2022, several incidents were reported concerning air travel and people using mobility aids specifically.



## Regulatory development

### **Federal Court of Appeal upholds Air Passenger Protection Regulations**

In December 2022, the Federal Court of Appeal upheld the *Air Passenger Protection Regulations* (APPR). Air Canada and Porter Airlines Inc. and 16 other appellants, including the International Air Transport Association, had brought the challenge to the Federal Court of Appeal. Appellants argued that the regulations exceeded the Agency's authority and contravened the Montreal Convention. The only authority that the Court found the Agency did not have was the authority to establish regulatory requirements for delayed baggage on domestic flights and voided this specific part of the APPR.

### **Amendments to the *Air Passenger Protection Regulations***

The pandemic highlighted a gap in Canada's air passenger protection framework, namely the lack of a requirement for airlines to provide refunds for flight disruptions outside airline control. On December 18, 2020, the Minister of Transport issued a Ministerial Direction providing the Agency with authority to develop a regulation to address this gap. Following two rounds of consultations with consumer advocates, the general public and the air industry, new refund requirements came into force on September 8, 2022.

The [Air Passenger Protection Regulations](#) now require airlines to provide passengers with either a refund or a rebooking in the case of disruptions that are either within or outside airline control.

### **Accessible Transportation Planning and Reporting Regulations**

The Agency has made new regulations called the [Accessible Transportation Planning and Reporting Regulations](#) (ATPRR). The ATPRR was created under the authority of the [Accessible Canada Act](#) (ACA). The ACA sets out planning and reporting requirements to identify, remove and prevent new barriers in priority areas such as communications, services, and equipment.

The ACA requires transportation service providers (providers) operating in the national transportation network to develop the following:

- accessibility plans,
- feedback processes and,
- progress reports.

Providers under the ACA include Crown corporations and agencies, such as VIA Rail, Marine Atlantic, the Canadian Air Transport Security Authority, the Canada Border Services Agency, and private sector entities, including airlines, ferry operators, passenger railways, and bus carriers, airports and other terminals.

The ATPRR create a framework for providers to track their commitments and progress toward greater accessibility. The regulations also give providers details on implementing the accessibility planning and reporting requirements.

## **Accessibility Requirements for Small Transportation Service Providers**

In 2019-20, following the publication of the [Accessible Transportation for Persons with Disabilities Regulations](#) (ATPDR), the Agency launched a public consultation on the issue of whether and how to extend the ATPDR requirements to small providers.

As part of this approach, the Agency invited representatives from the disability community and the transportation industry to be part of a small advisory group to assist with the design of the consultation process.

Recently, the Agency launched those consultations with a targeted group of representatives from the disability community and industry stakeholders. The goal is to develop a deeper understanding of the lived experiences of persons with disabilities who travel with small providers and acquire knowledge of small providers' operational realities. The Agency will develop a discussion paper for a more comprehensive consultation with a broad population of stakeholders and continue with talks in 2023.

# Regulatory implementation: Accessible transportation

## Overview of accessible transportation activities

The Agency responds to complaints and enforces the provisions of the ATPDR, the ATPRR, [Air Transportation Regulations](#) and the [Personnel Training for the Assistance of Persons with Disabilities Regulations](#). Accessibility complaints are prioritized, and there is no backlog for processing accessibility complaints.

## Accessible Transportation Planning and Reporting Regulations

### ATPDR exemption requests: Conditional Exemptions under Sections 170(3) and 170(4)

VIA Rail (VIA) sought an exemption from the requirements of paragraph 116(a) of the ATPDR to provide audio descriptions for media content available on its Wi-Fi portal. Under sections 170(3) and 170(4) of the [Canada Transportation Act](#) (Act), the Agency, with the approval of the Governor in Council, may exempt specified persons, means of transportation, services or related facilities and premises from the application of the ATPDR.

In September 2022, the Agency determined ([AT-R-2022-123](#)) that VIA failed to demonstrate that compliance with 116(a) of the ATPDR regarding the audio description requirement would cause it undue hardship. Accordingly, the Agency dismissed the application.

Airlines for America (A4A) filed a request for their member airlines asking for conditional exemptions from some specific requirements of the ATPDR. The Act allows the Agency to exempt providers from particular requirements if they were taking measures that were at least equivalent to what they would be required to do under the regulations, i.e. "meet or beat" a requirement under the ATPDR. A4A argued that alternative measures provided by their member airlines satisfied this requirement by waiving liability limits for damaged, destroyed, or lost mobility aids on an international air service.

In December 2022, the Agency granted ([A-2022-165](#)) the A4A member airlines an exemption, subject to conditions, as their alternative measures satisfied the "meet or beat" requirement. The exemptions expire on December 5, 2025.

## **Carriage of Emotional Support Animals on Board Transportation Equipment Report**

The Agency has received six applications in which applicants seek to travel with an animal that is or could be, an emotional support animal (ESA). As a growing number of persons with disabilities seek to travel with ESAs, the Agency joined the applications to allow for a more efficient process to consider whether carriers should be required to transport ESAs within the federal transportation network.

On December 14, 2022, the Agency rendered a decision ([LET-AT-55-2022](#)) related to ESAs where it found on a preliminary basis that acceptance of a species other than a dog as an ESA would cause undue hardship for carriers within the federal transportation network. The Agency has proposed conditions to manage the risks inherent in the carriage of emotional support dogs (ESDs), balancing the interests of persons with disabilities who use ESDs with those of the industry and the travelling public, including other persons with disabilities who use service dogs.

The parties had the opportunity to show cause as to why the Agency should not finalize its preliminary findings. The parties and other interested persons who wished to comment on the preliminary findings also had an opportunity to do so. The matter is currently under consideration by the Agency.

### **Update: No Wrong Door initiative**

The *No Wrong Door Initiative* ensures that people filing accessibility-related complaints are promptly and seamlessly referred to the proper federal organization. The [Accessible Canada Act](#) requires the Agency to work with other federal organizations to develop No Wrong Door regulations, including the Canadian Radio-television and Telecommunications Commission, Canadian Human Rights Commission, and the Federal Public Sector Labour Relations and Employment Board. The Agency received 16 complaints through the No Wrong Door initiative.

### **Guide for Indoor Service Dog Relief Areas**

The ATPDR requires terminals to have a designated area accessible to a person with a disability for service dogs to relieve themselves.

The Agency established a working group of service dog users, service dog training schools, and select airport personnel to support the development of [Best Practices for Indoor Relief Areas for Service Dogs in Terminals](#). These best practices were published in November 2022.

## **Air Carrier Medical Forms**

Medical forms are a means for air carriers to receive information from passengers with disabilities about their required accommodations. Not all accommodations require the use of medical forms.

The Agency facilitated a discussion between a small group of representatives from disability organizations and air carriers. Follow-up work will be undertaken to capture the lessons learned through this exercise.

## **Special Service Requests Codes**

Special Service Requests (SSR) codes relay information about the required accommodations for passengers with disabilities between airlines and between airlines and airports.

During 2022–2023, the Agency established an SSR working group with the National Research Council Canada and the International Air Transport Association to research and develop recommendations for possible future action related to SSR code use and associated services. The working group aims to understand better the communication and implementation of SSR codes and areas for future improvement. The Agency met with persons with disabilities, airlines, airports, and other interested stakeholders.

The [International Working Group on Special Service Request Codes Final Report](#) contained six recommendations and was published in October 2022.

## **International cooperation: International Civil Aviation Organizations**

The Agency continues to work with federal partners to raise the profile of accessibility at the International Civil Aviation Organization (ICAO). A key project is to develop a compendium of accessibility-related laws and regulations. This compendium is the first step to identifying and promoting best practices in accessible transportation. It will close knowledge gaps about accessible air travel worldwide. The compendium is expected to be published by ICAO in 2023.

## **Safe Securement and Containment of Mobility Aids in the Cargo Compartment (Phase 2)**

The Agency, with the National Research Council Canada and Transport Canada, undertook a detailed investigation and analysis of the securement and containment of

mobility aids in the cargo hold. This investigation was one of the recommendations of its [Mobility Aids and Air Travel Final Report](#). Stakeholders interviewed ground handlers, wheelchair manufacturers, aircraft manufacturers, airlines, travel agents, and travellers. The resulting [Phase 2 report](#) was published in June 2022. It contains several recommendations for the air industry related to functional guidelines. These include:

- training,
- needs analysis to identify gaps in skills and knowledge,
- functional job aid guidance and,
- improved communication between travellers and airlines.

Portions of this work were incorporated into the new International Air Transport Association *Guidance on the Transport of Mobility Aids*, which guides the industry on this subject. The Agency will continue to engage industry and persons with disabilities representatives to implement the research undertaken to date. We will continue advancing a domestic and international agenda for the safe transportation of mobility aids.





# Regulatory implementation: Air transportation

## Air licensing and charters

The Agency issues licences to Canadian airlines to operate air services within Canada.

The Agency also licences Canadian and foreign airlines to operate scheduled or non-scheduled international air services to and from Canada.



**Table 1: Air licensing activities**

Activity	Number
New licences – Canadian	65
New licences – Foreign	57
Suspensions	264
Reinstatements	164
Cancellations	70

**Table 2: Air charter permits and notifications**

Activity	Number
Permits issued	850
Charter notifications of flights	3,277

## Canadian status requirement

The Act requires that airlines holding domestic licences and certain international licences issued by the Agency must be owned and controlled-in-fact by Canadians.

### **Onex purchase of Sunwing Airlines Inc. ([LET-A-44-2022](#))**

On January 27, 2022, Onex Corporation, through its subsidiary companies, entered into a proposed transaction to purchase Sunwing Airlines Inc. Sunwing holds licences authorizing domestic, scheduled international, and non-scheduled international air services. On May 19, 2022, the Minister of Transport determined the proposed

transaction raised public interest issues. Consequently, the Agency was required to determine if Sunwing would be Canadian. On October 21, 2022, the Agency found that Sunwing would be Canadian. On March 10, 2023, the Minister of Transport announced that he had determined that the transaction was in the public interest. On March 10, the Government of Canada approved the transaction, subject to specific terms and conditions intended to protect the interests of travellers.

### **Flair Airlines Ltd. (Flair) ([A-2022-63](#))**

In March 2022, the Agency issued a preliminary determination that Flair may not be controlled in fact by Canadians. Flair holds licences authorizing domestic, scheduled international, and non-scheduled international air services. Flair made several changes to its governance and debt agreements to address the Agency's concerns. These changes included:

- ensuring Canadian shareholders and directors control the company at all times;
- withdrawing certain veto rights from non-Canadian shareholders;
- securing its debt through 2026 while limiting the non-Canadian lender's opportunity to call the debt before that time.

Based on the changes made on June 1, 2022, the Agency determined Flair is Canadian.

### **Volatus Aerospace Corp. ([LET-A-5-2023](#))**

Volatus Aerospace Corp. (Volatus) is a publicly-traded company that applied to operate an all-cargo service using drones. On February 10, 2022, the Agency determined that should Volatus implement – among other things – a variable voting structure, it would be considered to be Canadian. This structure ensures a majority of votes at shareholder meetings will always be cast by Canadians. Volatus has until February 12, 2024, to demonstrate compliance with the Agency's determination.

## **Financial requirements**

Financial requirements apply to Canadians applying for a licence to operate an air service using medium aircraft (40 to 89 seats) or large aircraft (greater than 89 seats). These requirements ensure licences are issued to applicants who are:

1. financially fit, and
2. adequately financed at the start of the proposed air services.

After confirming these financial and other requirements, the Agency issued licences to:

- Canada Jetlines Operations Ltd., a new operator.
- Kelowna Flightcraft (KF), a licensed operator of cargo-only services.
- Porter Airlines (Canada) Limited (PACL), a new operator.
- Wasaya Airways Limited Partnership, a licensed small aircraft operator.

## **International activities: Bilateral air transport agreements**

In cooperation with federal government departments, the Agency negotiates and implements international air transport agreements. We contribute expertise about Canadian legislative and regulatory requirements.

Agency staff participated in negotiations resulting in expanded air transport agreements with Colombia, Ecuador and India.

Agency staff also continued to work on ratifying international air transport agreements. This work completed the ratification process with Rwanda, Cameroon and the United Kingdom.

## **International activities: COVID-19 pandemic recovery**

COVID-19 continues to impact international aviation. Canada continued to work with several countries and airlines to ensure reciprocal rights for Canadian carriers. As COVID measures were lifted or re-introduced, the Agency worked to ensure the continuation or re-commencement of air services between Canada and other countries. The Agency also continued to implement the Ministerial Direction on air services to China, which directed the Agency to place similar limitations on Chinese carriers that China imposed on Canadian carriers. In support of this, we monitor air services operated under amended Chinese carrier licences.

## **International activities: International Civil Aviation Organization**

The Agency provides subject matter expertise to the Canadian mission of ICAO. Our staff participated in the 41st General Assembly Session. We continue participating in ICAO working groups to advance accessibility issues in air transportation and review guidance materials.

# Regulatory implementation: Rail transportation



## Monitoring freight rail service performance

The Agency monitors rail performance and service issues using publicly available data. We use this data and shippers' information to help assess the transportation system's overall health and provide evidence of service timeliness. This data can further point to service disruptions as they evolve, potentially requiring further investigation.

As part of this monitoring program, the Agency also looks at grain volumes and movement to determine how the service provided compares to the Grain Handling and Transportation System (GHTS) needs. If the service levels don't allow the GHTS to function effectively, this may also cause further investigation to determine whether there are issues beyond the carrier's control that led to the disruptions.

Embargo data is also monitored to ensure embargoes are targeted, used when necessary, and only as a last resort. Embargo data can indicate and help provide precision on the specific causes or impacts of observed service disruptions. They can also identify commercial practices not in keeping with the carrier's obligations to the transportation system and its users.

Specific data the Agency monitors include:

- Canadian National Railway Company (CN) rail volumes and Canadian Pacific Railway Company (CP) rail volumes;
- traffic volume variance across Canada, the United States, and Mexico;
- grain service and volume data through the Grain Monitoring Program reports and CN and CP's weekly reporting of grain volumes;
- AgTransport Coalition's daily and weekly reports, as published;
- Association of American Railroads embargo details; and
- additional information is provided through the Transportation Data and Information Hub, part of the Canadian Center on Transportation Data.

From time to time, other organizations may choose to share additional information about specific issues with us.

Using this data, Agency staff were able to identify supply chain events more quickly and discuss these events with stakeholders to work toward more proactive communications and resolutions. This intervention may have contributed to a general improvement in the timeliness of recovery when issues arose. The main contributor remains effective communication between stakeholder groups within the transportation system.

### **Maximum Revenue Entitlement program for transporting western grain by rail**

The Act requires the Agency to determine the maximum revenue CN and CP can earn for transporting regulated western grain.

In December 2022, the Agency determined ([R-2022-183](#)) that CN and CP exceeded their maximum revenue entitlements for the 2021–2022 crop year. In the 2021–2022 crop year, 28,383,726 tonnes of western grain were moved. This volume was a 46% decrease over the previous year. The notable drop in volume was due mainly to the drought conditions experienced in western Canada during the 2021–2022 growing season.

**Table 3: 2021–2022 Maximum revenue entitlements**

<b>Company</b>	<b>Entitlement</b>	<b>Grain revenue</b>	<b>Amount above (\$)</b>
<b>CN</b>	\$589,140,501	\$592,208,589	\$3,068,088
<b>CP</b>	\$513,144,863	\$515,508,638	\$2,363,775

As stipulated in the Act, the Agency ordered CN and CP to pay the excess amount and a 5% penalty to the [Western Grains Research Foundation](#) (a farmer-funded and directed organization). These penalties amounted to \$153,404 for CN and \$118,189 for CP.

Determination [R-2022-50](#) established the 2022–2023 crop year Volume-Related Composite Price Indices for CN and CP.

### **Regulated interswitching rates ([R-2022-164](#))**

In December 2022, the Agency made its annual determination of the regulated interswitching rates for 2023. Interswitching is part of the competitive access provisions

of the Act that give some shippers access to the services of railway companies that do not directly serve their facilities or sidings.

## **Cost of capital**

In 2022, the Agency made its annual determinations of the cost of capital for CN ([R-2022-137](#)) and CP ([R-2022-138](#)). This cost of capital rate is a distinct rate used for regulatory purposes other than for the movement of regulated grain and interswitching.

## **Cost of capital for western grain**

In 2022, the Agency made its annual determinations of the cost of capital for the movement of western grain for CN ([R-2022-49](#)) and CP ([R-2022-47](#)) for western grain. Beginning on August 1, 2022, we applied our [new standard assessment of railway capital structure](#).

## **Determination of issues related to the regulated cost of capital rates ([R-2022-16](#))**

Following two rounds of consultations in 2020 and 2021, on February 11, 2022, the Agency issued determination [R-2022-16](#) on net rail investment and capital structure calculation. The Agency uses these two components in calculating cost of capital rates for various railway-related costing determinations, including regulated interswitching rates and the Maximum Revenue Entitlement (MRE) for the movement of Western grain. Determination [R-2022-39](#) sets out the detailed reasons for the [R-2022-16](#) determination.

## **Section 98 applications**

The Agency currently has three applications for railway line construction projects.

On October 1, 2021, the Agency received an application from Canadian Pacific (CP), on behalf of Central Maine and Quebec Railway Canada (CMQ), to construct a bypass at Lac-Mégantic, PQ. The Agency has issued letter decisions to CMQ ([LET-R-60-2021](#) and [LET-R-54-2022](#)) requesting specific information to be provided by CMQ to complete its application. The applicant is continuing work to complete its application.

On June 23, 2022, we received an application from CN for the BHP Jansen Rail Spur in Saskatchewan. The application was deemed complete. A 30-day public comment period will be completed on March 29, 2023, with the determination to follow later in 2023.

On August 4, 2022, we received an application from CP for the Pitt Meadows Logistics Park in British Columbia. This application has not been deemed complete by the Agency.

Following our [review process for Section 98 applications](#), we will consider all information received, including comments submitted during our public consultations, before making our determinations.

### **Net Salvage Value for Vancouver Industrial Spur - *City of Vancouver versus CP* ([CONF-R-13-2022](#))**

On November 29, 2016, CP indicated its intention to dismantle a spur line between Vancouver and Richmond, British Columbia. The City of Vancouver applied to the Agency to determine the Net Salvage Value (NSV) of the spur line under subsection 146.3(1) of the Act. NSV is the market value of an asset less the costs associated with its disposal. These costs can include sales commission, track removal, disposal and environmental remediation. We determined that the NSV for this spur line is \$9,161,020.

### **Railway certificates of fitness**

The Agency has made all active Railway Certificates of Fitness for Canadian federally-regulated railway companies available to the public. The certificate provides a general description of the certificate holder's authorized rail operations within Canada. Details for railway companies that carry or host freight traffic on their network include:

- the volume of dangerous goods they are authorized to carry in a calendar year, and,
- whether they are authorized to include the carriage of crude oil in their operations.

# Regulatory implementation: Marine activities



## Marine coasting trade

Under the [Coasting Trade Act](#), only Canadian registered ships can provide marine carriage of goods or passengers between points in Canada. Using a foreign ship is only allowed if the Minister of Public Safety and Emergency Preparedness issues a coasting trade licence.

The Agency plays a role in the coasting trade licensing process by determining whether suitable Canadian ships are available when someone applies to use foreign ships for domestic commercial marine activities. This determination is provided to the Minister of Public Safety and Emergency Preparedness for further action.

In 2022–2023, the Agency processed 40 coasting trade applications. There were 37 applications where no offer of a Canadian ship was made. There were two contested applications, meaning a party offered a Canadian ship that it argued was suitable and available for the work detailed in the application.

The total number of coasting trade applications decreased by 16% compared to the previous year in 2022–2023. The percentage of contested applications decreased by 13% from a year earlier.

## Compliance and Enforcement

The Agency regulates more than 1,500 transportation service providers (providers) in the air, rail, marine and interprovincial bus sectors.

The Agency has many tools to advance its regulatory mandate and believes that combining them is the best way to ensure that Canadians and industry receive what they are entitled to and that the industry ultimately complies with the regulations.

In July 2022, the Agency updated its [Compliance and Enforcement Policy](#), reflecting our evolution to a new results-based, data-driven and risk-informed approach to compliance assurance. The updated policy is outcome-focused and supports our three core mandates. The policy sets out how we target our compliance monitoring and enforcement resources through a range of activities across four areas:



- Promotion,
- Verification,
- Enforcement,
- Follow-up.

## **Data Analytics - Driving Compliance and Enforcement Operations**

The Agency accelerated its use of previously identified tools and techniques for analyzing data to detect compliance patterns, trends, and emerging issues. Data scientists actively supported enforcement operations by analyzing complaints, media reports, and flight delay and cancellation data to identify potential non-compliance by providers. This work entailed the analysis of thousands of data points. The information produced proved critical in supporting and advancing targeted compliance investigations.

The Agency also extended its collaboration with the National Research Council Canada's Data Analytics Centre to apply data science and artificial intelligence to enhance our ability to identify potential compliance issues. The analysis of data and the application of risk profiles continue to be key sources of information to more efficiently and effectively target the Agency's compliance and enforcement resources to ensure impactful outcomes.

## **Enforcing Air Passenger Protection**

Our enforcement team has been actively monitoring the industry and investigating serious flight disruptions which affected air passengers' journeys. We have also been investigating issues concerning the transportation of mobility aids for people with disabilities. Where appropriate, Administrative Monetary Penalties (AMPs) were issued.

Last year saw a surge in air travel that followed more than two years of travel restrictions due to the COVID-19 pandemic. The surge resulted in unprecedented flight disruptions that significantly affected air passengers. In response, the Agency's Designated Enforcement Officers (DEOs) launched several investigations into potential violations of the regulations. This action resulted in issuing 23 notices of violation (NoVs) with AMPs totalling \$503,880 related to the APPR. These AMPs were issued to 13 different carriers from April 2022 onward.

Flight disruptions can impact passengers financially, whether for compensation or refunds owed to them by the air carrier. The compensation owed depends on individual passenger travel plans (cities of origin and destination) and the reason for the flight disruption. In 2022–2023, the Agency carried out targeted investigations to identify whether air carriers may have incorrectly categorized the reasons for the delay or cancellation of flights that resulted in no compensation paid to passengers. These were complex investigations involving the analysis of large amounts of data, assessing carrier responses to passenger compensation claims related to delayed or cancelled flights, and on-site audits of air carrier documentation. These enforcement interventions resulted in the re-categorization of some flights. Air carriers are paying passengers previously denied compensation. It also resulted in issuing \$223,680 in penalties to air carriers for not meeting their legal obligations to compensate passengers when air travel is disrupted for reasons within the carrier's control.

More specifically, DEOs completed investigations of Air Canada, WestJet and Flair regarding categorization and compensation related to disrupted flights.

Enforcement intervention resulted in the following outcomes:

- WestJet
  - The airline recategorized some flights, paying \$162,450 in compensation to 135 passengers previously denied compensation.
  - WestJet was issued \$112,800 in AMPs for failing to provide passengers with the compensation they were entitled to within 30 days as required.
- Air Canada: The airline paid \$77,000 to 117 passengers previously denied compensation.
- Flair: The airline was issued a NoV with AMP for \$39,000 for 40 incidents of incorrect compensation (passengers had been paid \$125 in compensation when they were entitled to \$500).

Additionally, DEOs completed the following investigations related to carriers not responding within 30 days to passenger requests for compensation. This investigation was done by assessing Agency complaints data against air carrier data:

- Air Canada – \$13,400 in penalties for 67 instances of non-compliance
- WestJet – \$11,000 in penalties for 55 instances

- Flair – \$28,000 in penalties for 140 instances
- Swoop – \$14,640 in penalties for 61 instances.

In December 2022, air travel was deeply affected by flight disruptions across the country, which included flight cancellations, lengthy flight delays, and significant tarmac delays. In response, the Agency's DEO launched several investigations.

In February 2023, the Agency issued \$126,000 in AMPs to Sunwing, related to their failure to comply with requirements to provide information to passengers when a delay or cancellation occurs.

Passenger well-being is a key objective of the APPR. Lengthy tarmac delays, which can cause passengers undue stress and discomfort, were the subject of 13 investigations in response to the winter flight disruptions. These investigations focused on air carrier obligations toward passengers during tarmac delays, such as:

- the provision of food and water,
- access to washrooms, and
- access to means of communication.

At this stage, the investigations have largely concluded that the carriers did meet their obligations.

## **Compliance with Agency orders and decisions**

The Agency verified compliance with 48 orders regarding passenger complaints by following up with passengers and providers, including:

- air passengers receiving compensation and refunds, as ordered by the Agency;
- air carriers amending their tariffs to ensure transparency with passengers about their terms and conditions;
- persons with disabilities receiving compensation for pain and suffering, as ordered by the Agency;
- confirming that providers developed or amended their policies to address orders to remove barriers for persons with disabilities.

## Accessibility and compliance

The Agency continued work on its comprehensive strategy to ensure compliance with the ATPDR. The Agency followed up on the 40 inspections initiated in 2021–2022. This activity ensured providers implemented corrective action plans where we detected deficiencies to address the gaps and achieve compliance.

In response to observations made by DEOs during inspections, the Agency launched a four-part compliance promotion initiative. It provides guidance and self-assessment tools to assist providers in understanding and assessing their compliance with the regulations. Since airlines were recovering from the pandemic and hiring many new employees, we began with guidance on provider training obligations. Our compliance promotion objective was to assist providers in ensuring all staff received the accessibility training required to remove transportation barriers and treat people with disabilities with dignity.

The Agency has conducted investigations into ten incidents involving four Canadian air carriers. These incidents related to:

- damage to a mobility device;
- the possible mishandling of passengers while they were being transferred to airplane seats;
- charging for the transportation of a medical device, and,
- a carrier's refusal to transport a mobility aid.

Some of these investigations may result in enforcement action.

As travel resumed following the pandemic, the Agency conducted on-site inspections at cruise ship ports and airports to ensure compliance with accessibility requirements. We initiated follow-up inspections to ensure that the Canada Border Services Agency CBSA and the Canadian Air Transport Security Authority CATSA consistently displayed accessible signage at airport locations across Canada.

The ATPRR came into force in December 2021. In the summer and fall of 2022, the Agency undertook compliance promotion and education activities with Class 1 transportation service providers (providers), which includes publicly owned providers. Class 1 providers (government and crown corporations) had to notify the Agency that they had published their accessibility plan description of their feedback process by

December 31, 2022. All Class 1 providers have notified the Agency of their publications, which the Agency is reviewing.

Class 2 providers (entities that average 100 employees or more) must notify the Agency that they have published their accessibility plans and a description of their feedback processes by June 1, 2023. The Agency sent compliance promotion and guidance to all Class 2 entities to ensure they know their obligations and deadlines.

The Agency also engaged an expert in Web Content Accessibility Guidelines to review provider websites to ensure compliance with the requirements of the regulations. The expert also reviewed the Web Content Accessibility Guidelines-related requirements of the ATPRR for all Class 1 entities.

## The Transportation System

Numerous investigations on air carriers operating without a licence or a charter permit were completed throughout the year, resulting in several NoVs with AMPs.

As a follow-up to Ministerial Direction and to provide a level-playing field for Canadian air carriers, the Agency also monitored Chinese air carriers to ensure that they were adhering to agreed-upon flight schedule restrictions.

The Agency actively monitored all discontinued routes in light of the pandemic and the related impact on air carrier operations. This work ensured the required discontinuance steps were completed and affected communities were provided adequate notice of the impending discontinuance of flight services.

In cooperation with other departments, the Agency provided oversight to ensure that CN respected the conditions set out in the authorization under Section 98 of the [Canada Transportation Act](#) to construct an intermodal hub at Milton, Ontario.

**Table 4: 2022–2023 Compliance and verification activities**

Activity	Number
Carrier inspections	16
Facility inspections	43
Carrier monitoring at terminals	77
Targeted verifications	44

Activity	Number
Website monitoring	26
Targeted investigations	79
<b>Total</b>	<b>285</b>

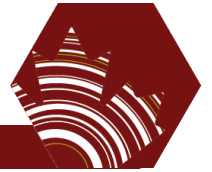
**Table 5: Enforcement actions taken 2022–2023**

Activity	Number
1. Notices of violations issued with Administrative Monetary Penalty	33
2. Notices of violations issued with a warning	0
<b>Total number of violations found in 1 and 2 above</b>	<b>643</b>
3. Cautionary notices issued	9
<b>Total number of potential violations found in 3 above</b>	<b>16</b>
Total amount of Administrative Monetary Penalties issued	\$725,380

### ***Accessible Canada Act enforcement***

**Table 6: Reporting to Parliament (amendments to subsection 42(2) of the [Canada Transportation Act](#)) requirements on Agency's annual reporting**

Enforcement actions	2022–2023
Number of inspections conducted to verify compliance and non-compliance	52
Number of orders made under Section 181.2	0
Number of orders, in writing, made under Section 26, 60 to 62	0
Number of Notices of Violation issued under Section 180	4
Number of inquiries made under any of Sections 172, 172.1 and 172.3	12



## Summary of our dispute resolution activities

Thousands of transportation customers, service providers, clients, community groups and residents, and other interested parties turn to the Agency every year seeking to resolve disputes about air travel, railways, marine shipping or accessibility of travel for persons with disabilities. As an independent quasi-judicial tribunal, the Agency uses a range of approaches, from simple and informal methods to formal judicial proceedings, as follows:

- Facilitation, a quicker and less burdensome approach where a case officer assesses the issue and leads an informal exchange between the parties, usually by phone or email;
- Mediation, where an Agency mediator helps parties resolve their differences through negotiation (face-to-face, video conference or teleconference);
- Arbitration, where an arbitrator reviews the facts (or final offers) submitted by the parties; or,
- Adjudication, where written arguments and evidence are presented in a formal process, and a Panel of one or more Agency Members issues a decision that is legally binding on the parties and made public.

See [Dispute resolution methods](#) on the Agency's website for an overview of how disputes are resolved.

Most complaints are resolved informally through facilitation or mediation 98%, with a small percentage decided through arbitration or formal adjudication 2%.

See [Statistics 2022–2023](#) for the Agency's detailed dispute resolution statistics.

## Resolving air passenger disputes

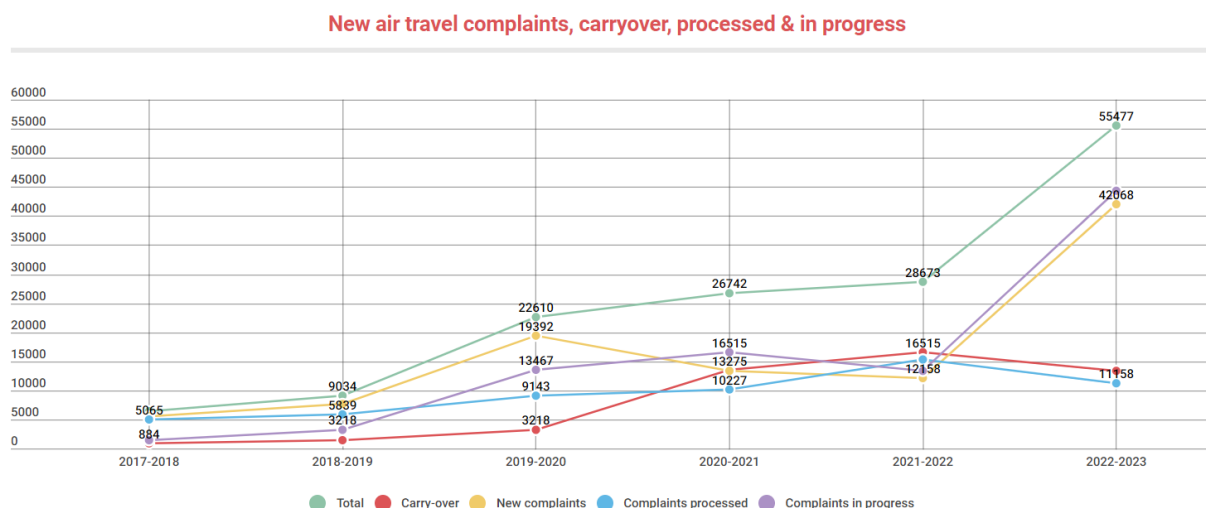
The Agency received 42,068 complaints this year – the highest on record. This large volume of complaints received is attributed mainly to a combination of the following:

- high demand for air travel following the easing of COVID-19 travel restrictions,
- widespread schedule disruptions during the summer of 2022 and the holiday travel period in December 2022.

In December, the Agency began publishing new data to provide Canadians with additional information about the air travel sector. The data shows the number of air travel complaints submitted to the Agency per 100 flights operated by Canadian and foreign airlines. The data, compiled by the Agency, is updated quarterly.

## Increasing Complaint Volumes

The following graph shows the sustained, higher-than-anticipated rates of complaints received by the Agency during the reporting period, with increases associated with travel disruptions in the summer and December holiday periods.



**Table 7: New air travel complaints, complaints carried over, and processed**

Complaints	2022-2023	2021-2022	2020-2021	2019-2020	2018-2019	2017-2018
Carry-over from previous reporting period	13409	16515	13467	3218	1384	884
New complaints	42068	12158	13275	19392	7650	5565
Complaints processed	11158	15264	10227	9143	5839	5065
<b>Total complaints</b>	<b>55477</b>	<b>28673</b>	<b>26742</b>	<b>22610</b>	<b>9034</b>	<b>6449</b>



In 2022–2023, the Agency received 42,068 new complaints related to air travel, on top of the 13,409 carried over from the previous year. These included complaints against 120 airlines from 68 countries worldwide. This amount represents an increase of 246% from the prior year. The Agency processed 11,158 air travel complaints for 2022–2023.

### Top issues raised by passengers

Flight disruptions and ticketing issues were the top concerns raised by passengers. Passengers often identify multiple issues regarding their travel experience within each complaint. As a result, the number of issues raised exceeds the number of complaints filed.

**Table 8: 2022–2023 Issues raised by passengers**

Issue	Frequency
<a href="#">Flight disruptions</a>	21059
<a href="#">Ticketing</a>	2,753
<a href="#">Reservations</a>	600
<a href="#">Baggage</a>	1,516
<a href="#">Refusal to transport</a>	306
<a href="#">Assistance</a>	86
<a href="#">Denied boarding (bumping)</a>	138
<a href="#">Fares</a>	67
<a href="#">Communications</a>	27
Out of Agency jurisdiction	181
Other	32

**Table 9: 2022–2023 Air travel complaints processed**

Resolution method	Number processed
Facilitation	6,728
Mediation	92
Adjudication	124
Air Sector Financial Aid Package	354
Withdrawal, declined, out of jurisdiction	3,860

Complaints the Agency received about refunds for flights cancelled due to the pandemic were closed as a result of the Government of Canada providing airlines with a financial aid package.

See the Agency's [2022–2023 Statistics](#) for other air travel complaint statistics.

## Process

The Agency remains committed to educating prospective complainants about their rights and responsibilities. The Agency also encourages the transportation industry to resolve disputes with passengers directly without additional intervention.

Air passengers may bring their complaints or concerns to the Agency after contacting the airline. Passengers unsatisfied with the airline's reply or without a response within 30 days may submit their case and become applicants under the APPR.

The wait times can be more than 18 months for air passengers seeking to resolve their complaints. This wait is due to an unprecedented number of complaints received. We recognize this is an unacceptably long time and are working to reduce wait times for our services substantially. However, delays do not affect the outcome of a dispute resolution process. Anyone who has submitted a complaint to the Agency can access Status Update, a new application on our website. This application provides an immediate update on where they are in the queue and the next steps for resolving their complaint.

## Efficiency

The Agency has undertaken a comprehensive review of its complaint processes. We continuously monitor operational data to ensure we understand the workload coming in and our processing capacity.

We are examining solutions to find efficiencies in our processes. For example, we were able to streamline the intake of complaints and reduce incomplete and inaccurate applications from 50% of all applications received to 10%, which resulted in less administrative back and forth and shorter wait times for applicants.

We anticipate that this ongoing review will continue to yield opportunities for process efficiencies and automation. Our data-driven focus has allowed us to quickly review cases informally and formally by batching cases, finding cases with a common factor such as flight number or travel issue, and processing these cases in groups.

In addition, we have also found ways to streamline our adjudication process and reduce our administrative burden, substantially reducing the time to issue an adjudication decision.

Most complaints are resolved informally through facilitation or mediation (98%), and only a small percentage has to go through a formal adjudication process (2%). We typically address facilitation cases in less than 20 days once an agent is assigned the case. We continue to seek and implement efficiencies in handling complaints and are committed to reducing our wait times and increasing processing capacity.

## **Key air complaint decisions**

The Agency issued 124 decisions this year addressing air travel complaints. A number of these decisions provide interpretive guidance to passengers as well as to airlines. They contain information to help passengers and airlines understand how the air passenger protection regime applies to everyday air travel experiences. That includes flight disruptions, baggage issues, and any resulting assistance, refunds or compensation.

### ***Lareau v WestJet* ([89-C-A-2022](#))**

This decision establishes an airline's obligations under the APPR to determine what may be considered within the airline's control concerning a flight disruption, specifically one caused by a crew shortage.

The Agency had to determine whether WestJet properly applied the rules applicable to the ticket purchases by the applicant, as set out in the airline's tariff.

The Agency found that WestJet did not sufficiently establish that the cancellation resulting from the crew shortage was unavoidable despite proper planning. The Agency also found that the airline did not demonstrate that the cancellation was not the result of its actions or inactions.

The Agency ordered WestJet to compensate the applicant \$1,000 for the inconvenience.

Westjet has appealed this case to the Federal Court of Appeal.

### **Flight cancellation caused by crew shortage - *Crawford v Air Canada* ([107-C-A-2022](#))**

This decision sets out the obligation under the APPR for airlines to provide evidence relating to the specific circumstances of a flight disruption, specifically regarding a flight cancellation caused by a crew shortage.

The Agency found that Air Canada did not provide sufficient evidence demonstrating that cancelling the applicants' flight was outside its control.

The Agency ordered Air Canada to compensate both applicants \$1,000 each for inconvenience.

Air Canada's leave to appeal to the Federal Court was dismissed.

### **Flight cancellation caused by crew shortage - *Usselman v AC* ([153-C-A-2022](#))**

This decision sets out the obligation under the APPR for airlines to provide evidence relating to the specific circumstances of a flight disruption, specifically regarding a flight cancellation caused by a crew shortage.

In addition, this decision sets out that the applicant is not entitled to compensation based on the number of flight disruptions experienced. The decision states that compensation is based on the primary reason, or most significant contributing factor, of the overall delay.

The Agency found that Air Canada did not provide sufficient evidence demonstrating that the cancellation of the applicant's flight was outside the carrier's control or within its control but required for safety purposes.

The Agency ordered Air Canada to compensate the applicant \$1,000 for inconvenience.

### **Flight disruptions attributed to safety - *Anslow v Sunwing* ([20-C-A-2023](#))**

In this decision, the Agency found that the carrier's evidence demonstrated that the flight disruption causing a delay of the applicants' flight was within the carrier's control for safety purposes. However, the carrier's inactions or omissions caused the safety issue. Flight disruptions within the carrier's control but required for safety purposes should be limited to events that a prudent and diligent carrier cannot foresee nor prevent.

The Agency ordered Sunwing to compensate the applicant \$800 for inconvenience.

As this application relates to a flight delay, under subsection 113.1(3) of the [Air Transportation Regulations](#) and Section 67.4 of the Act, the Agency has the authority to apply all or part of its decision concerning the airline's obligations under the APPR arising from a flight disruption to other passengers on the same flight, to the extent that it considers appropriate.

The Agency will continue to address disputes on a case-by-case basis to provide further clarity and to develop additional guidance for passengers and airlines.

## Resolving accessibility disputes

### Overview and statistics

The Agency contributes to removing barriers to the mobility of persons with disabilities from federally regulated air, rail, ferry, and bus transportation.

As part of its efforts, the Agency wants to ensure that the disability community and persons with disabilities have tools to help them exercise their right to an accessible transportation network. The Agency continues to promote its confidential toll-free helpline. This past year, staff answered 161 helpline calls about accessible transportation or assisted callers in filing a transportation-related accessibility complaint.

In 2022–2023, the Agency successfully resolved 126 accessibility complaints out of 130 that participated in mediation. Issues such as wheelchair assistance, lost or damaged wheelchairs and mobility aids, and service animals were among some of the complaints received. Mediation has been a very successful tool for addressing accessibility disputes.

**Table 10: 2022–2023 Accessibility Disputes**

Resolution method	Number processed
Facilitation	0
Mediation	126
Adjudication	12

### Key accessibility decisions

#### Emotional Support Animal Preliminary Decision ([LET-AT-55-2022](#))

The Agency continues to consider whether carriers should be required to transport emotional support animals within the federal transportation network. After preliminary consideration of cases from six applicants, we found that accepting species of animals other than dogs would cause undue hardship for carriers. While dogs may generally be

suitable as emotional support animals, the unrestricted carriage of emotional support dogs (ESDs) would cause undue hardship for carriers due to the:

- health and safety risks,
- animal behaviour and welfare concerns, and the
- impacts of fraudulent representation of pets as ESDs.

We also found that carriers could carry some ESDs without undue hardship with appropriate conditions and safeguards.

The Agency sought submissions on the issue. We will review all submissions and comments from parties and other interested persons and decide whether to finalize or modify its preliminary decision based on the information it receives.

**Authority to award compensation for pain and suffering in accessibility matters: the cases of Browne ([114-AT-A-2022](#)) and Mehra ([5-AT-C-A-2023](#))**

The Agency used its power for the first time in these two cases to award compensation for pain and suffering following a finding of an undue barrier to the mobility of persons with disabilities. The applicants claimed that persons approved by WestJet for its One Person, One Fare (1P1F) program should be able to book their flight tickets through the online booking system and not the WestJet Special Care Desk. The Agency found that the applicants faced an undue barrier from the limited business hours and unreasonable telephone wait times to reach the Special Care Desk.

The Agency found sufficient evidence to award compensation for these specific cases. As a corrective measure, WestJet proposed a new process allowing 1P1F program passengers to book an itinerary 24 hours a day, seven days a week, using the online booking system when the Special Care Desk is closed.

**One Person One Fare on international itinerary – *Yale v Air Canada* ([95-AT-A-2022](#))**

This decision highlights the challenges associated with this longstanding issue in the international context and explains why the Agency declined to determine the application. The applicant filed an application against Air Canada regarding the lack of a 1P1F policy to provide an extra seat free of charge on international flights so her service dog would have additional floor space.

The Agency found that applying 1P1F to international carriage is best addressed through ongoing international efforts to improve government cooperation and coordination.

Given these considerations, the Agency exercised its discretion under section 37 of the Act and declined to determine the application.

## Resolving rail and marine disputes

Part of the Agency's rail mandate is to help resolve disputes between railway companies and their customers or neighbours. Rail disputes commonly involve noise and vibration concerns or complaints about railway crossings. As described in two of the key cases below, they can also include:

- cost-apportionment complaints, such as disagreements on which legal entity is responsible for the cost of railway crossings or their improvement, and,
- maintenance or repair of the rail line and its supporting infrastructure.

Since its 1904 start as the *Board of Railway Commissioners*, the Agency has built a solid record of dependable and independent review of disputes in rail operations. The Agency is also looking to the future – collaborating with the Alternative Dispute Resolution Institute of Canada to expand its team of qualified arbitrators with broad skillsets and more diverse representation across Canada.

Marine disputes can involve user fees at ports, charges for pilotage services, or coasting trade applications for foreign or non-duty-paid ships to work in Canadian waters.

The Agency's Rail, Shipper, and Community Help Line remains an important service to assist stakeholders with rail-related issues. During the reporting period, staff assisted with 94 inquiries in total.

**Table 11: 2022–2023 Rail and Marine Dispute Resolution**

<b>Resolution method</b>	<b>Rail complaints processed</b>	<b>Marine complaints processed</b>
Facilitation	23	0
Mediation	17	0
Arbitration	4	0
Adjudication	12	1

## Key rail and marine decisions

### Road crossing – *CN v Milton* ([74-R-2022](#))

This case involves the cost apportionment for a proposed railway crossing project. CN applied for authority to replace an existing at-grade crossing for its Halton Subdivision Line by constructing an underpass for four traffic lanes. The Corporation of the Town of Milton (Milton) requested that the grade separation be built to accommodate a six-lane roadway opening.

The Agency authorized CN to construct the requested grade separation. CN is to pay 100% of the grade separation construction for four lanes of traffic and active transportation paths and the maintenance of the subway substructure and superstructure. Milton would be responsible for the road maintenance costs and would also pay for all other maintenance costs of the subway. In addition, Milton could pay for all additional costs associated with constructing the two extra lanes if desired.

The Corporation of the Town of Milton has appealed the decision.

### Utility crossing - *Vancouver v CP* ([CONF-R-12-2022](#))

This case examined the need for specific terms and conditions in constructing a utility railway crossing. The City of Vancouver (Vancouver) applied to build and maintain utility crossings on CP's Marpole Spur in British Columbia. CP opposed the crossings due to the proposed construction method. CP also wanted safety terms related to qualified contractors, protective and rehabilitative work, supervision, notice to access the right-of-way, and emergency access.

The Agency noted that both Vancouver's proposed method of construction and CP's preferred method are appropriate methods of construction under [Transport Canada's Standards Respecting Pipelines Crossings Under Railways](#), as long as the construction is carried out following the *Railway Safety Act*.

The Agency authorized the crossings but did not deem it necessary to impose terms and conditions for the construction or maintenance of the utility crossing.

### Noise and Vibration - *MacFronton v CP* ([127-R-2022](#))

This decision addresses an application about the noise and vibrations from a longstanding established railyard in an already busy neighbourhood. The applicants'



neighbourhood is in a busy urban residential environment near the mainline tracks of CP's operations located north of Lambton Yard, Ontario.

The Agency acknowledged that the noise and vibration levels have negatively impacted the applicants at their residences. However, given the area's features, CP's level of service obligations, and operational requirements, the Agency also determined that the noise and vibrations produced by CP's operation are reasonable. The Agency dismissed the application.

### **Demurrage - *Canada Malting Co. Limited v CP* (32-R-2023)**

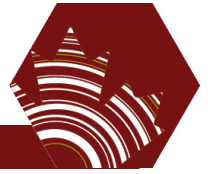
Canada Malting Co. Limited (Canada Malting) filed an application with the Agency against CP. Canada Malting challenged the reasonableness of charges and conditions for specified items of Tariff 2 related to demurrage and other asset use, switching, handling and miscellaneous invoices.

Charges for demurrage and asset uses are to promote efficient logistics and provide some compensation to a railway company for the inefficient handling of its railcars.

Canada Malting argued that the charges were unreasonable and some fees were excessive. It also said that associated terms and conditions permitted CP to charge fees when the customer was not at fault.

The Agency ordered CP to amend the current version of Tariff 2 and to provide a copy of the revised Tariff 2.

# Assessment of the *Canada Transportation Act*



Under subsection 42(2) of the [Canada Transportation Act](#) (the Act), the Agency must report on the operation of, and any difficulties observed in, the administration of the Act through its Annual Report.

The Agency is responsible for a comprehensive regulatory framework covering key economic, consumer protection, and accessibility aspects of the federally regulated transportation system. Over the years, the Agency's mandate has broadened with new legislative and regulatory authorities, and the demand for its services has increased significantly. The Agency's structure and governance have not evolved at the same pace, which has created challenges in responding to demands for its services.

This year, the Agency has identified amendments to the Act to address some of these challenges to more efficiently and effectively fulfill its expanded mandate.

## Amendments to the *Canada Transportation Act* to Simplify the *Air Passenger Protection Regulations*

The Agency made the [Air Passenger Protection Regulations](#) (APPR) following changes by Parliament to the Act in 2018 and came into force in 2019. Under this legislative framework, passenger entitlements in the case of flight disruptions depend on whether the flight disruption is:

- within the airline's control;
- within the airline's control but required for safety; or,
- outside the airline's control.

Requiring reliance on information that can only be known by the airline makes determining a passenger's right to entitlements under the APPR complex.

Amending the Act to eliminate the three categories of flight disruption and instead making the provision of entitlements to passengers the default response to a flight disruption – except in extraordinary circumstances – would make it simpler for everyone to understand their entitlements and responsibilities, and for the Agency to administer the regime.

## Efficiencies in Processing Air Passenger Complaints

Under the Act, most of the powers given to the Agency to regulate the transportation industry must be exercised by Governor in Council-appointed members. The complexity and the significant economic and policy impacts of many matters decided by the Agency, particularly in the area of accessibility and rail, explain the profile of the Agency's decision makers.

However, as the Agency's mandate has evolved over recent years, it has had to deal with a massive and continually increasing volume of air travel complaints that do not have the same level of complexity. Specifically, the Agency received over 42,068 air travel complaints in 2022–2023. These complaints typically involve low-dollar value private claims with limited policy impacts.

The Act could be amended to give the authority to public servants, instead of Governor in Council-appointed Members, to decide passenger claims related to an airline's failure to meet its APPR and tariff obligations. This authority would leave members available to decide more complex or impactful matters.

This approach is seen in other administrative tribunals, including the Immigration and Refugee Board of Canada, where the decision makers of the Immigration Division and the Refugee Protection Division are public servants.

This amendment would make dispute resolution processes simpler, shorter and more cost-efficient by reducing the internal steps and staff support required.

For similar reasons, the Act could also be amended to allow the authority to be delegated to public servants to decide on certain regulatory authorizations that have become routine and require limited or no discretion, such as issuing charter permits that are no longer subject to strict requirements and conditions under the [Air Transportation Regulations](#). The powers of the Agency over licensing matters are similar to some of the powers of the Minister of Transport under the [Aeronautics Act](#) and

the [Canadian Aviation Regulations](#). Some of these powers—such as issuing a Canadian Aviation Document—are delegated to Transport Canada staff, whereas the Agency cannot do the same.

## Availability of Tariff and Enhanced Intervention Authority Regarding the Content of Tariffs

A tariff is a contract between an air carrier and its passengers. It covers passengers' rights and obligations, as well as the air carrier's rights and responsibilities toward the passenger. For international services, all licensees must file a tariff with the Agency before their operations can begin. However, domestic tariffs for transportation between points in Canada do not need to be filed. Amending the Act to require air carriers to publish domestic tariffs on their websites would allow for greater transparency for passengers regarding the conditions placed on their tickets and what they may or may not be entitled to beyond their rights under the APPR. Easier access to airlines' prevailing tariffs would also accelerate the processing of complaints, as the Agency would not require them from airlines before initiating an examination of the claim.

In addition, under the Act, the Agency can intervene on its own motion (without a complaint) if a concern arises regarding the reasonableness or clarity of an international air tariff. However, the Agency cannot intervene in the same way for cases involving domestic travel. For example, the Agency must first wait for a complaint to be received before looking into possible issues, even if those issues are widely reported in the media. An amendment could be made to allow the Agency to look into possible issues with domestic tariffs on its own motion, consistent with its authority for international tariffs.

## Modernizing the Agency's Enforcement Tools

The Agency currently ensures compliance with its regulatory and legislative requirements using cautionary notices in the case of inadvertent, low-impact contraventions of requirements (and warnings in the case of accessibility provisions) and penalties – Administrative Monetary Penalties (AMPs). However, there are additional compliance tools that the Agency could use to minimize violations and potential complaint volumes through targeted amendments.

In particular, the Agency would benefit from being able to enter into compliance agreements with transportation service providers (providers), as appropriate, if it

determines the providers are not following a regulatory or legislative requirement. Depending on the violation and the provider's compliance history, these agreements can be effective tools for ensuring that the provider brings themselves into compliance as soon as possible while supporting them in the process. The Agency was recently given the authority, through the [Accessible Canada Act](#), to use compliance agreements in response to violations of accessibility-related requirements. Moreover, the Accessible Canada Act also amended the Act to provide the Agency with express inspection powers for matters related to accessible transportation. Amending the Act to add powers to enter into compliance agreements, which define a clear path to return to compliance and even higher AMPS when not respected, and other powers currently found in the Act concerning accessibility-related violations would give the Agency modern and consistent enforcement tools across all of its mandates.

In addition, the current limitation period for prosecutions and issuance of notices of violation (NoV) is only 12 months (from when the subject matter of the proceedings arose). Extending the statute of limitations to 24 months would allow the Agency to ensure that issues of non-compliance are addressed even if proceedings and issuance of NoVs do not happen immediately. In cases where investigations are needed, a further delay may be possible as these cases can be complex and take time.

Other, more basic changes are needed in the area of compliance. For example, AMPs are commonly used by regulators to efficiently enforce legal requirements and create incentives for compliance. The maximum amount for AMPs for most violations is outdated, as it was set in 1996. In addition, the maximum AMP for violations of accessibility-related requirements is currently \$250,000. Therefore, the minimum penalties, \$25,000 for corporations and \$5,000 for individuals, should be increased to \$250,000.

## Accessible Transportation

The [Accessible Canada Act](#) amended the Act to provide the Agency with the authority to investigate systemic issues within Canada's transportation system related to the mobility of persons with disabilities on its own initiative, with the approval of the Minister of Transport. This authority is an important tool that can be used to examine reasons for what appears to be recurring or broad-based barriers to travel by persons with disabilities and identify ways to remove these barriers. However, the Agency cannot order remedies or issue orders to address problems found through such an investigation. This limitation stands in contrast to the authority the Agency has for its own motion inquiries into whether a railway company is fulfilling its service obligations.

The Act could be amended to provide the Agency with remedial powers in this area to ensure the investigation finding can be relied upon to eliminate barriers to the mobility of persons with disabilities.

## Increase Transparency by Requiring Airlines to Publish Data

The Agency and Canadians generally lack data on trends and issues relating to air passenger transportation. An amendment to the Act to require providers to report on key metrics would provide more insight into what is happening on the ground and how well the rights of air passengers are being protected.

Data on the air travel experience of persons with disabilities and APPR-related complaints data would provide the Agency with an enhanced understanding of how well passenger rights are being upheld. These data would be relevant in resolving disputes and in examining the efficacy of the APPR and the ATPDR.

Key metrics may include airlines' on-time performance (for example, flight delays and cancellations); lost and damaged baggage; denial of boarding; complaints about child seating, transportation of musical instruments, and timely information to passengers.

In addition, given the issues and challenges seen in the transportation system last year, Canadians would benefit from greater transparency. This transparency could be achieved by requiring air carriers to publish their performance metrics. This data will allow Canadians better insight when choosing providers and may incentivize air carriers to improve performance standards.

## Appeals and Judicial Reviews of Agency Decisions

As a result of the Supreme Court of Canada's decision in the 2019 [Vavilov case](#), Agency decisions are now reviewed on a standard of correctness by the Federal Court of Appeal rather than by reasonableness. As such, deference is no longer owed to the Agency despite its longstanding specialized expertise in federal transportation matters. This decision is a significant departure from decades of case law in which the Agency's decisions were given deference. It also undermines the Agency's expertise and its ability to issue decisions in support of policy objectives, as well as legislative and regulatory requirements. The Act could be amended to specifically state that the intended

standard of review for Agency decisions is reasonableness. This approach recognizes the Agency's longstanding expertise in areas under its mandate.

Further, the Agency's participation in appeals of its decisions to the Federal Court of Appeal has been questioned in recent proceedings. Subsection 41(4) of the Act gives the Agency the right to be heard on the argument of an appeal. The Act could be amended to clarify the right of the Agency to appear and to confirm the scope of its participatory right. This right to respond to all arguments raised in an appeal, including at the leave stage, would help ensure that the record before the Federal Court of Appeal is as complete as possible.

In recent years, there has been an increase in judicial reviews for matters not subject to appeals. The Agency is not a party to those reviews. However, for the same reasons mentioned above, the Agency should be named as a party to allow it to be heard, consistent with the Agency's participation in appeals.

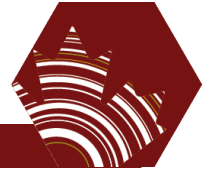
## Restrictions on Appointment of GIC Members

Currently, Governor in Council-appointed members must reside in the National Capital Region. This requirement unnecessarily restricts the pool of potential members. Removing this requirement could increase the diversity of talent available to the Agency.

Also, provisions limit the ability of the Chair to expand or decrease the number of temporary members based on case file volumes. Furthermore, given that temporary members are not allowed to serve more than two consecutive one-year terms, the Agency is experiencing issues with continuity as the Agency has to reassign cases upon the end of a temporary member's term. The Agency would have greater flexibility and respond more efficiently if the three-person cap on the number of temporary members were removed or raised and temporary members were permitted to serve more than two consecutive one-year terms.

## Statutory Immunity for Members

The Act does not currently provide statutory immunity for members. As a result, if named in a civil proceeding for actions or decisions taken in their official capacity, members of the Agency do not have the same level of protection as members of other federal and provincial tribunals. Amending the Act to provide this immunity for members will protect the ability of these decision makers to fulfill their functions impartially and without the threat of time-consuming litigation.



## Air travel complaints

For other air travel complaint statistics, see the Agency's [2022–2023 Statistics](#) and [Air travel complaints per 100 flights – by airline](#).

### Air travel complaints per 100 flights – by airline

These tables provide Canadians with additional information about the air travel sector. The data shows the number of air travel complaints submitted to the CTA per 100 flights operated by Canadian and foreign airlines.

#### Context

- The tables include airlines with an average of one or more complaints per 100 flights to/from/within Canada submitted to the Agency during one of the quarterly periods. Airlines that did not meet this criteria or that did not operate at least 100 flights over the reporting periods are not included on the list.
- The complaint data is based on the information submitted by passengers and may not have been reviewed by the Agency at the time of publishing.
- Complaints are submitted to the Agency after the passenger has attempted to resolve the issue directly with the airline. Airlines have 30 days to respond to the passenger.
- The data is based on the number of flights by airline and does not reflect the number of passengers per flight or the size of the aircraft.
- The data used is based on all of the air travel complaints submitted to the Agency; the numbers do not imply whether or not an airline actually met its regulatory requirements.
- Most complaints (98%) are resolved informally through facilitation or mediation; other complaints move to a formal adjudication process.
- Airlines identified in the complaint may change based on the information supplied by the passenger and the airline during the complaint review process.
- Complaints related to accessibility are not included in these tables.



## Number of complaints per 100 flights operated by Canadian airlines

<b>Airline</b>	<b>Average (April 1, 2022 – March 31, 2023)</b>
Air Canada	4.3
Air Transat A.T. Inc.	3.3
Flair Airlines Ltd.	15.3
Lynx Air	5.4
Sunwing Airlines Inc.	13.8
Swoop Inc.	13.2
Westjet	6.6

## Number of complaints per 100 flights operated by foreign airlines

<b>Airline</b>	<b>Average (April 1, 2022 – March 31, 2023)</b>
Aer Lingus Limited	2.8
Aeroméxico – Aerovias de Mexico S.A. de C.V.	2.7
Air Algérie – EPE SPA Air Algérie	4.9
Air France – Société Air France	8.6
Air India Limited	13.9
Air New Zealand Limited	1.0
ALIA – The Royal Jordanian Airline plc	0.5
All Nippon Airways Co., Ltd.	2.7
American Airlines, Inc.	1.1
Austrian Airlines, AG	1.9
Avianca – Aerovias del Continente Americano S.A.	2.4
Azores Airlines (Sata Internacional) – Serviços e Transportes Aéreos, S.A.	3.3
British Airways Plc	5.4
Caribbean Airlines Limited	1.0
Cathay Pacific Airways Limited	3.7
China Airlines Limited	0.3

<b>Airline</b>	<b>Average (April 1, 2022 – March 31, 2023)</b>
Condor Flugdienst GmbH	2.2
Copa Airlines – Compañía Panameña de Aviación, S.A.	5.6
Delta Air Lines	0.7
Egyptair	11.2
Emirates	6.3
Ethiopian Airlines Enterprise	7.4
Etihad Airways P.J.S.C.	14.6
Eva Airways Corporation	1.4
Icelandair	1.3
Japan Airlines	1.8
K.L.M. Royal Dutch Airlines – Koninklijke Luchtvaart Maatschappij, N.V.	6.1
LOT Polish Airlines SA – Polskie Linie Lotnicze LOT SA	4.0
Lufthansa German Airlines – Deutsche Lufthansa Aktiengesellschaft	37.6
Pakistan International Airlines Corporation	4.3
Philippine Airlines, Inc.	4.3
Qatar Airways (Q.C.S.C.)	24.5
Royal Air Maroc – Compagnie Nationale Royal Air Maroc	21.2
Swiss International	7.5
TAP Air Portugal – Transportes Aéreos Portugueses, S.A.	13.7
Turkish Airlines Inc. – Türk Hava Yolları Anonim Ortaklığı	16.1
United Airlines	0.7

## Number of complaints processed (by carrier)

Excludes cases closed as withdrawn, declined or outside of the Agency's jurisdiction.

Carrier	Nationality	Total
ABC Aerolineas, S.A. DE C.V.	Mexico	17
Aer Lingus	Ireland	1
Aerovias de Mexico S.A. de C.V.	Mexico	49
Aerovias del Continente Americano S.A.	Colombia	8
Air Canada	Canada	2,502
Air China Limited	China	5
Air India Limited	India	87
Air New Zealand Limited	New Zealand	1
Air North Charter & Training Ltd.	Canada	1
Air Pacific Limited	Fiji	3
Air Transat A.T. Inc.	Canada	261
Alaska Airlines, Inc.	United States of America	1
ALIA - The Royal Jordanian Airline plc (Royal Jordanian)	Jordan	5
Alitalia - Società Aerea Italiana S.p.A.	Italy	2
All Nippon Airways Co., Ltd.	Japan	1
American Airlines, Inc.	United States of America	107
Austrian Airlines AG	Austria	5
Beijing Capital Airlines Co., Ltd.	China	1
British Airways Plc	United Kingdom	13
Brussels Airlines NV/SA	Belgium	8
Canadian North Inc.	Canada	1
Caribbean Airlines Limited	Trinidad and Tobago	4
Cathay Pacific Airways Limited	Hong Kong	1
Central Mountain Air Ltd.	Canada	1
China Airlines Limited	Taiwan	1
China Eastern Airlines Corporation Limited	China	6

<b>Carrier</b>	<b>Nationality</b>	<b>Total</b>
China Southern Airlines Company Limited	China	2
Compagnie Nationale Royal Air Maroc	Morocco	79
Compañía Panameña de Aviación, S.A.	Panama	11
Condor Flugdienst GmbH	Germany	3
Corsair	France	3
Delta Air Lines, Inc.	United States of America	35
Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines)	Germany	67
EgyptAir	Egypt	12
El Al Israel Airlines Ltd.	Israel	3
Emirates	United Arab Emirates	10
EPE SPA Air Algérie	Algeria	6
Ethiopian Airlines Enterprise	Ethiopia	8
Etihad Airways P.J.S.C.	United Arab Emirates	25
Eva Airways Corporation	Taiwan	2
Flair Airlines Ltd.	Canada	368
Gulf Air	Bahrain	1
Icelandair ehf	Iceland	10
Koninklijke Luchtvaart Maatschappij, N.V. (K.L.M. Royal Dutch Airlines)	Netherlands	25
LATAM Airlines Group S.A.	Chile	3
Lynx Air	Canada	14
Middle East Airlines Airliban S.A.L.	Lebanon	1
Oman Air	Oman	8
OpenSkies	France	6
Pacific Coastal Airlines Limited	Canada	9
Pakistan International Airlines Corporation	Pakistan	7
PAL Airlines Ltd.	Canada	5
PasCan Airlines (9736140)	Canada	1
Perimeter Aviation	Canada	1

<b>Carrier</b>	<b>Nationality</b>	<b>Total</b>
Philippine Airlines, Inc.	Philippines	20
Polskie Linie Lotnicze LOT SA (LOT Polish Airlines SA)	Poland	7
Porter Airlines Inc.	Canada	35
Qantas Airways Limited	Australia	4
Qatar Airways (Q.C.S.C.)	Qatar	35
Sata Internacional - Serviços e Transportes Aéreos, S.A.	Portugal	6
Société Air France	France	37
Société Tunisienne de l'Air	Tunisia	6
Sunwing Airlines Inc.	Canada	661
Swiss International Air Lines Ltd.	Switzerland	7
Swoop Inc.	Canada	352
Taca International Airlines, S.A.	El Salvador	1
Transportes Aéreos Portugueses, S.A.	Portugal	99
Türk Hava Yollari Anonim Ortakligi (Turkish Airlines Inc.)	Turkey	39
Ukraine international Airlines	Ukraine	4
United Airlines, Inc.	United States of America	105
Vietnam Airlines JSC	Vietnam	1
Virgin Australia International Airlines	Australia	2
WestJet	Canada	2,060
<b>Total</b>		<b>7,298</b>