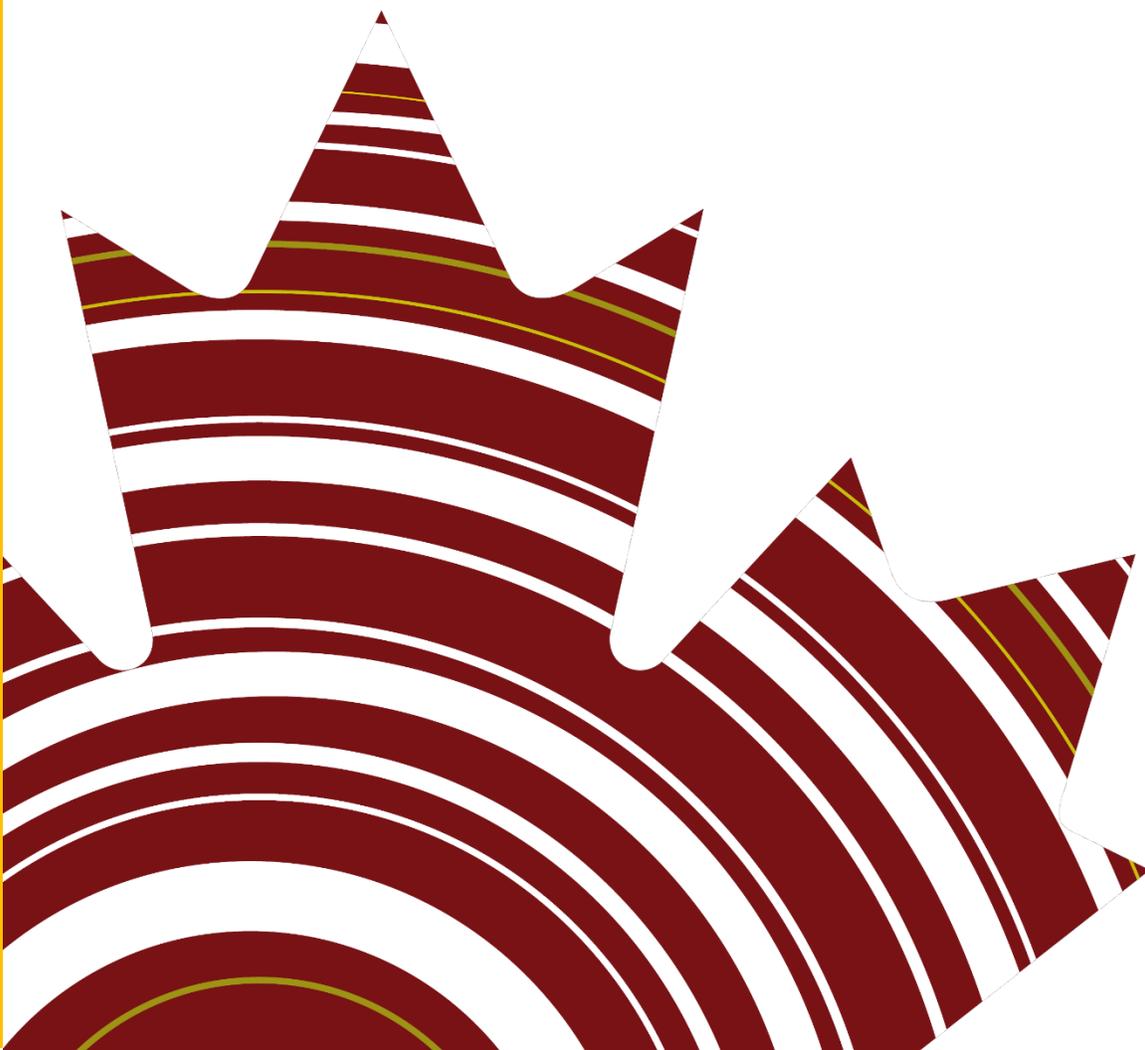




Canadian
Transportation
Agency

Office
des transports
du Canada

Annual Report 2020–2021



Canada 

Table of contents



| | |
|--|----|
| ■ Message from the Chair and CEO | 4 |
| ■ About the CTA | 7 |
| What we do: Our three mandates..... | 7 |
| How we do it: Our tools | 8 |
| ■ Pandemic impacts | 8 |
| CTA response to the pandemic..... | 8 |
| Air passenger protection..... | 10 |
| Accessibility..... | 11 |
| National transportation system | 12 |
| ■ Providing consumer protection for air passengers | 13 |
| Overview | 13 |
| Key proceedings and decisions..... | 19 |
| ■ Protecting the fundamental right of persons with disabilities to an accessible transportation network..... | 22 |
| Overview | 22 |
| Accessibility-related observations | 31 |
| ■ Ensuring that the national transportation system runs smoothly and efficiently..... | 32 |
| Overview | 32 |
| Highlights for 2020-2021 | 33 |
| ■ Other CTA initiatives | 41 |
| Guidance renewal..... | 41 |
| Sample tariff 2021 | 42 |
| Indigenous consultation framework..... | 42 |
| Modernization of the compliance monitoring and enforcement program | 43 |
| Other developments in enforcement..... | 44 |
| ■ Transportation industry trends | 45 |
| Air sector | 45 |
| Rail sector..... | 47 |
| Marine sector | 51 |
| Interprovincial/international bus sector | 51 |

- Assessment of the Act..... 52
 - Improvements targeted to specific mandates..... 52
 - Cross-cutting improvements..... 54
 - Updating the CTA’s compliance assurance toolkit 56
- Appendix: Reporting on dispute resolution and compliance activities..... 57
 - Air travel complaints 57
 - Applications before the CTA and the findings on them 61
 - Accessible Canada Act enforcement 63
 - Compliance monitoring and enforcement activities 63
- Endnotes 65

This document and other Canadian Transportation Agency publications are available on our website at otc-cta.gc.ca.

For more information about the CTA, please contact:

Canadian Transportation Agency
 Ottawa, Ontario K1A 0N9
 Telephone: 1-888-222-2592
 Facsimile: 819-997-6727
 Email: info@otc-cta.gc.ca
 Website: otc-cta.gc.ca

© Her Majesty the Queen in Right of Canada, as represented by the Canadian Transportation Agency, 2021

Catalogue No. TT1E-PDF
 ISSN 1494-7927

Available in alternate formats
Version française disponible

Message from the Chair and CEO



The year covered by this Annual Report, April 2020 to March 2021, was unlike any we've lived through. At its outset, the world was reeling from a rapidly unfolding and unpredictable pandemic, whose effects included not only tragic deaths and illnesses wherever it struck, but also the global collapse of air travel, widespread economic and social disruptions, and an abrupt shift, for many, to remote work.

Everyone hoped the upheaval would last for weeks or, at most, months. It has, of course, gone on much longer, though the amazingly fast development of vaccines offers the prospect of some return to normalcy before too long.

The CTA spared no effort to meet the challenges of this dramatic period, even as almost all its staff worked from home. As the crisis began to unfold, we gave airlines extra operational flexibility and worked around the clock to issue the air licences and permits required for emergency repatriation flights to get Canadians home and for cargo flights to transport urgently-needed PPEs to Canada. More generally, we succeeded in maintaining our full complement of services to Canadians, thanks to the exceptional professionalism and resilience of our employees, targeted IT investments in the preceding years aimed at facilitating agile work arrangements, and a sustained focus on strengthening connections and communicating information in real-time.

The circumstances have meant finding new ways of doing our jobs. We quickly transitioned to using videoconferences and electronic documentation to do everything from holding hearings to processing applications for air licences and rail certificates of fitness to conducting compliance reviews, to issuing adjudicative decisions, to meeting with our multi-stakeholder Accessibility Advisory Committee, to engaging stakeholders and the public on subjects as diverse as rail interswitching rate-calculation methodologies and a new Indigenous consultation framework.

From our kitchen tables, basement work corners, and garages, we've never stopped delivering the mandates given to us by Parliament.

But the pandemic hasn't just meant changes to work arrangements and processes. It also raised a number of substantive matters that the CTA has had to address. The most striking was the gap in the air passenger protection framework highlighted since March 2020, namely, the lack of a general obligation for airlines to provide refunds for flights cancelled for reasons outside their control. Under the [Canada Transportation Act](#) (the Act), the only requirement that could be included in the [Air Passenger Protection Regulations](#) (APPR) for flight disruptions beyond airlines' control was that airlines ensure passengers could complete their itineraries. As flights were cancelled in massive numbers due to COVID-19, it became clear that this was inadequate, and in December 2020, the CTA received the authority to fix the gap through a Ministerial direction. We immediately launched consultations on a new refund requirement and aim to have the proposed regulatory language published in the *Canada Gazette* by summer 2021.

This change will strengthen what is already one of the world's most comprehensive air passenger protection regimes. The APPR establish a wider range of minimum passenger entitlements than comparable regulations in other jurisdictions. And they've increased passengers' awareness of their rights. In the three months between December 15, 2019, when the APPR fully came into force, and the beginning of the pandemic-related turmoil in air travel, 11,000 Canadians filed air travel complaints with the CTA – meaning we were receiving more complaints every week than we used to get in a year. And despite declines in air travel of some 90%, we still received almost 14,000 complaints during the period covered by this report.

Through a mobilization of resources, substantial productivity gains, and emphasis on informal dispute resolution (just 1% of complaints end up in court-like adjudication), we were able to process 10,227 complaints in 2020–2021. Processing as many complaints as possible, as quickly as possible, is and will remain a key priority for the CTA.

The same is true for our efforts to help make Canada's national transportation system the most accessible in the world. Accessibility for persons with disabilities is a human right. Working with our Accessibility Advisory Committee, which brings together representatives of the disability community and industry, the CTA produced guidance material to support implementation of the ground-breaking [Accessible Transportation for Persons with Disabilities Regulations](#) (ATPDR) and explored innovative ways of removing barriers to travel by persons with disabilities. And as a member of the Council of Federal Accessibility Agencies, which is comprised of organizations with accessibility-related investigation and adjudication functions, we worked to ensure a "no wrong door" experience for people who wish to file disability-related complaints. Real progress has been made towards maximizing

the accessibility of travel; as we emerge from the pandemic, ensuring no person is left behind due to their disability should be a core element of transportation recovery plans.

Finally, the events of 2019-20 underscored the critical importance of freight rail-based supply chains, and the CTA was there – as we have been since 1904 – to provide information and dispute resolution assistance to railway companies, the shippers who use their services, and the people who live near their lines.

These are just a few of the many areas in which the CTA makes a difference in the lives of Canadians. I've had the privilege of serving as head of the CTA since July 2015 and will leave the role in May 2021. During this busy and productive time, we undertook and completed a comprehensive review and modernization of all the regulations the CTA makes and administers. We designed and implemented cutting-edge compliance assurance strategies and tools. We handled an extraordinary 23-fold increase in complaint numbers. We used a variety of means, including inquiries initiated on our own motion, to clarify legal requirements and ensure the realization of legislative purposes. We released a raft of new, plain-language guidance material. We raised Canadians' awareness of their transportation-related rights and our services. We engaged meaningfully with the public and stakeholders on countless topics and files. And through all this activity and change, we guarded our institutional independence, based our decisions solely on the facts and the law, and prioritized the creation of a healthy, high-performing, inclusive organization that treats every employee with respect and dignity.

In the end, of course, it's all about people. I've been fortunate, as Chair and CEO, to work with some of the finest Governor in Council appointees and public servants in the country. I'm deeply grateful to have had this opportunity, and I have no doubt that the CTA will continue to make major contributions to the economic and social well-being of Canadians going forward.



Scott Streiner

Chair and Chief Executive Officer

About the CTA



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

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

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

What we do: Our three mandates

- We help ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians: those who work and invest in it; the producers, shippers, travellers and businesses who rely on it; and the communities where it operates.
- We protect the human right of persons with disabilities to an accessible transportation network.
- We provide consumer protection for air passengers.

How we do it: Our tools

To help advance these mandates, we have three tools at our disposal:

- Rule-making: We develop and apply ground rules that establish the rights and responsibilities of transportation service providers and users and that level the playing field among competitors. These rules can take the form of binding regulations or less formal guidelines, codes of practice or interpretation notes.
- Dispute resolution: We resolve disputes that arise between transportation service providers and their clients or neighbours, using a range of tools from facilitation and mediation to arbitration and adjudication.
- Information provision: We provide information on the transportation system, the rights and responsibilities of transportation service providers and users, and the CTA's legislation and services.

Pandemic impacts



CTA response to the pandemic

The CTA shifted rapidly to remote work in March 2020, shortly after the World Health Organization declared the COVID-19 virus a pandemic. We continued to deliver all services remotely throughout 2020–2021.

Over the year, members of the public, transportation service providers, disability-rights organizations, consumer groups, and other interested stakeholders could continue to request our services, file applications, and do normal business with the CTA through normal channels. During this time, we also prepared for an eventual return to work at

a new facility at 60 Laval in Gatineau, QC. We are working with the Rick Hansen Foundation to ensure fully accessible premises.

In 2020–2021, the CTA took several steps to respond to the impacts of COVID-19 across the federal transportation network. We consulted extensively with members of the public, transportation service providers and other stakeholders to better understand those impacts. One goal was to receive input from members of the public, consumer organizations, airlines and experts on establishing additional refund obligations for airlines.

The CTA also informed the public of changes during the pandemic by:

- creating a web page, [Important Information for Travellers During COVID-19](#),
- publishing a "[Statement on Vouchers](#)" to help ensure that passengers would not be left out of pocket for cancelled flights due to COVID-19, and
- publishing a summary of measures related to the pandemic, [How the CTA is adapting to unprecedented and challenging times](#).

We issued orders in response to the pandemic – to reflect the radically changed operating environment for the air industry. New guidance was developed– for example, to make sure the needs of travellers with disabilities were met during this time, when masks and physical distancing may have caused barriers to travel. We also issued several charter permits to facilitate the repatriation of Canadians stranded abroad and to bring critical goods such as Personal Protective Equipment (PPE) to Canada.

The COVID-19 pandemic has had impacts around the world. That is why we placed a particular effort this year on connecting with other regulators worldwide to exchange best practices and lessons learned in responding to this pandemic. In cooperation with the Organisation for Economic Co-operation and Development (OECD), the CTA organized an online forum on regulating transportation during and after COVID-19. This session was attended by delegates from 20 countries and co-moderated by the CTA Chair and CEO. It provided a platform to share information on the challenges in transport sectors caused by the COVID-19 pandemic and steps taken in response.

Air passenger protection

New authority for the CTA to develop airline refund requirements

The COVID-19 pandemic – and the global collapse of air travel that resulted in mass flight cancellations – highlighted a gap in Canada’s air passenger protection framework: the absence of a requirement for airlines to refund tickets when flights are cancelled or where there is a lengthy delay, for reasons outside their control and where it is not possible for the airline to complete the passenger’s itinerary within a reasonable time.

When this gap in the framework became apparent, the Chair and CEO of the CTA made a commitment that, with the necessary authority, the CTA would move quickly to close it. He laid this out in an op-ed in the Hill Times, [Air passenger protection during and beyond the pandemic](#).

On December 18, 2020, the CTA was provided with the authority, through a direction from the Minister of Transport, to make a new regulation to close the gap for future travel. From December 21, 2020, to March 1, 2021, the CTA sought feedback from the public, consumer groups, airlines and experts on the specifics of the new regulation. The CTA is developing a draft regulation, taking into account feedback received during the consultations. The CTA’s goal is to have the regulation published in the Canada Gazette by summer 2021.

Consultations on temporary exemptions to the *Air Passenger Protection Regulations*

In December 2020, the CTA launched a public consultation after the International Air Transport Association (IATA), the National Airlines Council of Canada (NACC), Air Canada and Sunwing Airlines asked that the CTA reinstate and extend exemptions to some compensation and rebooking provisions of the [Air Passenger Protection Regulations](#). We had previously put these in place to give carriers flexibility to adjust to the sudden and drastic changes in the initial stage of the pandemic.

We considered the applications and consultation submissions in making its determination. On April 16, 2021, we [denied the requested exemptions](#). We concluded that the APPR's critical passenger protections should only be temporarily adjusted in

extraordinary circumstances and that while these existed during the early stages of the pandemic, this was no longer the case.

Accessibility

Accessibility during COVID-19

Measures to mitigate the spread of COVID-19 – such as masks and physical distancing – can create additional barriers to accessible transportation in the federal transportation network for people with disabilities.

In response, the CTA published [Accessible travel in the context of COVID-19](#) to ensure that transportation service providers meet the needs of persons with disabilities. One example is by making alternate forms of communication available for passengers who cannot understand masked personnel.

We have worked with the National Research Council and Transport Canada to publish additional guidance, [Best Practices for Accessible Travel in the Context of COVID-19](#). This work followed a review of COVID-19 practices and interviews with persons with disabilities and transportation service providers. It covers best practices in physical distancing and navigation, mask use, sanitization and hand washing, and communicating information.

Temporary delays to the ATPDR

The CTA's [Accessible Transportation for Persons with Disabilities Regulations](#) establishes comprehensive, legally binding requirements for accessible travel. The ATPDR became law in June 2019 and most provisions – over 200 – came into force on June 25, 2020. The more complex provisions are being phased in over two years until 2022.

Due to the severe operational and financial disruptions to the transportation sector caused by COVID-19, the coming into force of a handful of more technically or operationally complex provisions was delayed until December 31, 2020. This targeted delay was granted under subsection 170(3) of the [Canada Transportation Act](#) through Order No. 2020-AT-186 with the approval of the Governor-in-Council. It was intended to provide a lead time for transportation service providers to comply with requirements that were difficult to achieve due to COVID-19. The decision to grant some delays was informed by a consultation with transportation service providers and the disability community.

Since the order was issued, we received further requests from transportation service providers for temporary exemptions from the ATPDR under the same subsection of the [Canada Transportation Act](#). Most of the requests were to further extend delays of provisions for which an adjustment to the effective date was already approved in the above-noted Order. They have noted that the COVID-19 pandemic continues to cause significant disruptions, impacting their ability to implement these ATPDR requirements.

The [transportation service providers' submissions and stakeholder comments were posted online](#). The disability community, members of the public, and other interested stakeholders have had an opportunity to provide comments. We also established a working group to discuss aspects of the exemption requests to:

- facilitate a better understanding of the regulatory requirements;
- discuss potential strategies for implementation of and adherence to these requirements given the current challenges posed by COVID-19; and,
- explore measures that could potentially be equivalent to those required by the regulations.

The working group was also asked to help identify acceptable conditions under which some flexibility could be given to transportation service providers in implementing their obligations under the ATPDR.

In March 2021, the working group met three times for a total of nine hours. Meetings were held via fully accessible Zoom, including simultaneous translation, ASL/LSQ interpretation, and Communication Access Realtime Translation. An [accessible version of the written transcript](#) is available, in both official languages, on the CTA's website. The Panel will consider the transcript of the working group meetings and decide on these exemption requests in due course.

National transportation system

Air licensing and charter processing during the COVID-19 pandemic

The CTA adopted a proactive approach to COVID-19, moving quickly to provide 24/7 service to process urgent applications for passenger and cargo flights.

We moved rapidly to provide the necessary licences and permits for flights by carriers operating repatriation flights for Canadians returning to Canada and foreign nationals departing Canada for their respective countries.

In all, we processed over 130 charter flights, which carried over 25,000 passengers and brought urgent medical supplies and cargo to Canada.

Exemption orders from the discontinuance and reduction of service provisions

On March 25, 2020, we issued Order No. 2020-A-36, which provided Canadian carriers with a temporary exemption from the requirements of section 64 of the [Canada Transportation Act](#).

The temporary exemption permits airlines to quickly adjust their operations to travel restrictions and to address rapidly dropping passenger volumes resulting from the COVID-19 pandemic.

We issued Order No. 2020-A-105 on June 19, 2020, extending the temporary exemption period to October 15, 2020. On October 15, 2020, we issued Letter Decision No. LET-A-66-2020 extending the temporary exemption period to March 31, 2021. On February 1, 2021, we issued Order No. 2021-A-2, further extending the temporary exemption to August 31, 2021.

Providing consumer protection for air passengers



Overview

Consumer protection for air passengers is the CTA mandate that generates the largest number of applications. Passengers can file a complaint with us if they cannot resolve it with the airline. We resolve disputes that arise between airlines on the one hand and air passengers on the other, using a range of tools from facilitation and mediation to adjudication. If facilitation and mediation do not resolve the complaint, it may then go

through adjudication. Adjudication is a court-like process in which we make a decision based on submissions and evidence submitted by the parties.

We can resolve complaints on a wide range of air passenger protection issues related to the rules set out by airlines in their tariffs, as well as the obligations in the APPR and the [Montreal Convention](#) (an international treaty to which Canada is a party).

A tariff is a contract between passengers and airlines when a ticket is purchased. It establishes the airline's and the passenger's responsibilities in a range of areas, which are described in the [Canada Transportation Act](#) and the APPR. If a passenger believes that an airline has not followed its tariff or that the terms and conditions in the tariff are unclear, unreasonable or unduly discriminatory, the passenger may file a complaint with the CTA.

The APPR sets minimum airline obligations to passengers for all flights to, from and within Canada, including connecting flights. These requirements, which form part of an airline's tariff, have been fully in place since December 2019. They cover issues such as:

- clear communication;
- delayed and cancelled flights;
- denied boarding;
- tarmac delays;
- the seating of children under the age of 14;
- lost or damaged baggage; and
- the transportation of musical instruments.

We resolve most complaints through informal means, which is less costly and time-consuming for passengers and airlines than adjudication. Of all cases processed this year, we handled 99% through informal facilitation and mediation services and 1% through formal adjudication.

In the three months between the coming into force of the APPR and the start of the pandemic, we received an unprecedented number of complaints: over 11,200 in those three months alone.

We continued to receive a high volume of air travel complaints during the reporting period, driven primarily by system-wide disruptions to passenger air travel triggered by the global pandemic. Given the record-setting spike in air travel complaints that immediately preceded the pandemic, overall air travel complaints to be processed by the CTA rose to over 17,000 during the year – the highest on record.

Over 15,000 complaints have been filed with us from March 2020 to March 31, 2021. Over 8,900 of those pertain to voucher/refunds.

We pivoted during the early phases of the pandemic lock-down period to ensure continuous operations. In the interests of fairness, air travel complaints are processed on a “first-come, first-serve basis.” We significantly increased our complaint processing capacity and productivity throughout the year to ensure it addresses all complaints as expeditiously as possible.

Highlights from 2020–2021

The CTA received 13,275 complaints during the 2020–2021 reporting period.

Air travel complaints received by fiscal year

Figure 1: New complaints and complaints carried over

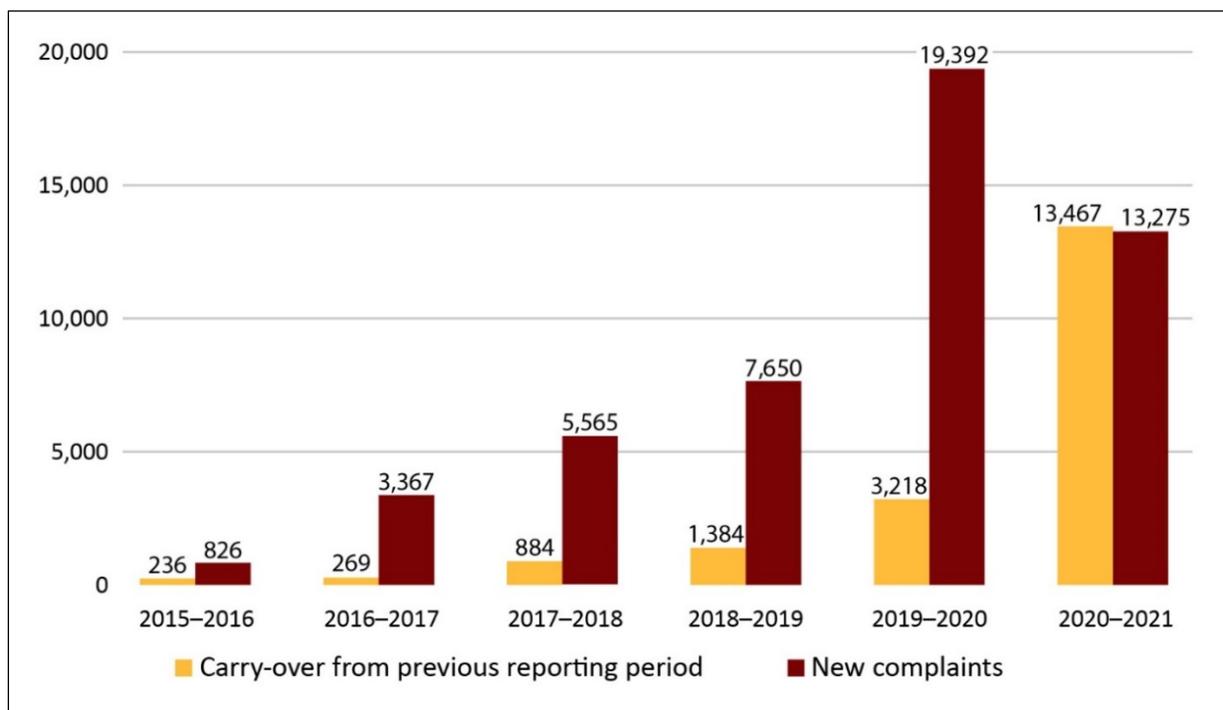


Table 2: New complaints and complaints carried over

| | 2020- 2021 | 2019- 2020 | 2018- 2019 | 2017- 2018 | 2016- 2017 | 2015- 2016 |
|---|---------------|---------------|---------------|---------------|---------------|---------------|
| Carry-over from previous reporting period | 13,467 | 3,218 | 1,384 | 884 | 269 | 236 |
| New complaints | 13,275 | 19,392 | 7,650 | 5,565 | 3,367 | 826 |
| Total | 26,742 | 22,610 | 9,034 | 6,449 | 3,636 | 1,062 |

We processed 10,227 complaints in 2020–2021. These included complaints against 107 airlines from 62 countries worldwide. Of this figure, 2,518 complaints were withdrawn, outside of our jurisdiction, or not filed against specific airlines.

Flight disruption and baggage remain the top two issues raised by passengers in complaints processed during the reporting period. There are often multiple issues identified within each complaint. As a result, the number of issues raised exceeds the number of complaints filed and processed.

2020–2021 flight disruption issues

Figure 3: Flight disruptions (n=9551)

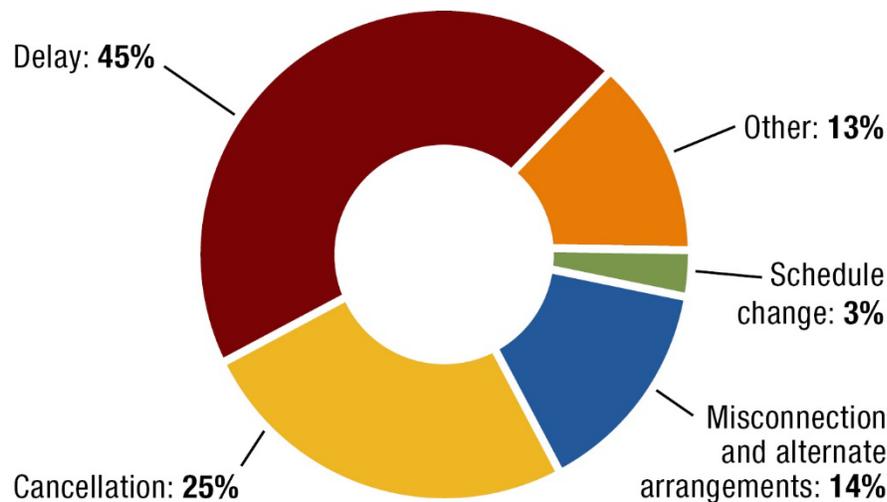


Table 4: Flight disruptions (n=9551)

| Flight disruption issue | Percentage |
|---|-------------|
| Delay | 45% (4,298) |
| Cancellation | 25% (2,388) |
| Misconnection and alternate arrangement | 14% (1,337) |
| Schedule change | 3% (287) |
| Other | 13% (1,241) |

2020–2021 baggage issues

Figure 5: Baggage issues (n=1585)

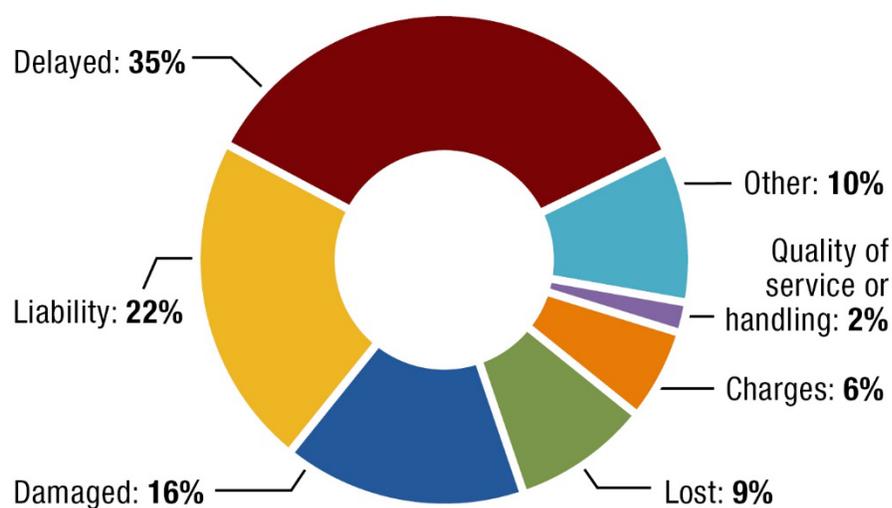


Table 6: Baggage issues (n=1585)

| Baggage issue | Percentage |
|--------------------------------|------------|
| Delayed | 35% (555) |
| Liability | 22% (348) |
| Damaged | 16% (254) |
| Lost | 9% (142) |
| Charges | 6% (95) |
| Quality of service or handling | 2% (32) |
| Other | 10% (159) |

Complaints processed under the Air Passenger Protection Regulations

2020–2021 APPR issues (from processed complaints)

Figure 7: APPR issues

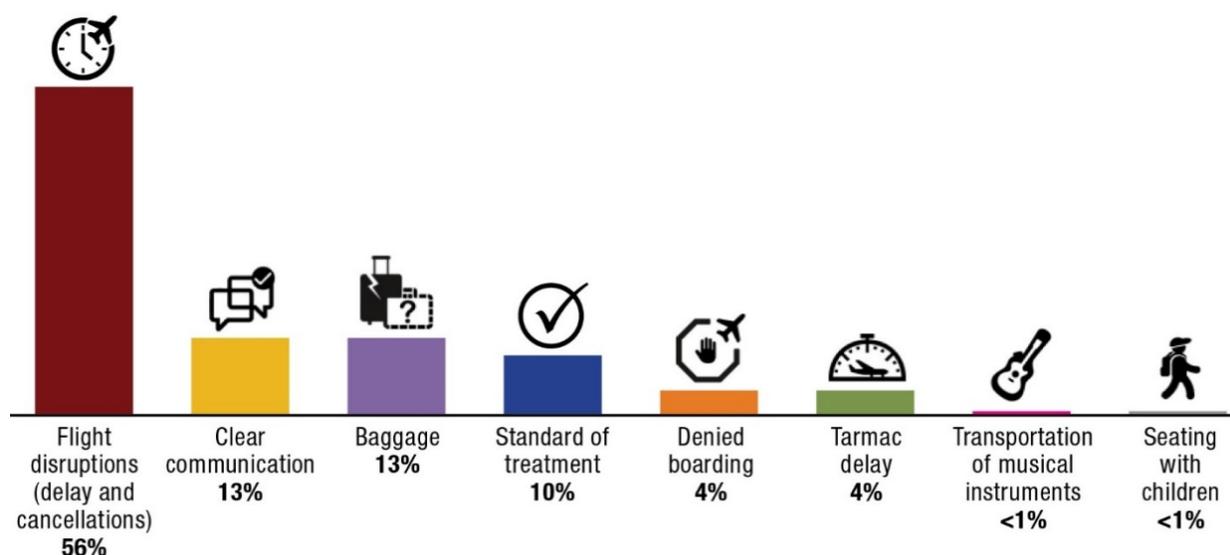


Table 8: APPR issues

| APPR issue | Percentage |
|---|--------------|
| Flight disruptions (delays and cancellations) | 56% |
| Clear communication | 13% |
| Baggage | 13% |
| Standard of treatment | 10% |
| Denied boarding | 4% |
| Tarmac delay | 4% |
| Transportation of musical instruments | less than 1% |
| Seating with children | less than 1% |

Of all 10,227 complaints processed, 6,209 were under the APPR. Flight disruptions, communication, and baggage were the top three issues raised.

For other air travel complaint statistics, see our [2020–2021 Statistics](#).

Key proceedings and decisions

Inquiry into complaints regarding reasons for flight delays or cancellations

The [Air Passenger Protection Regulations](#) require airlines to provide accurate and timely communications. After the coming into force of these APPR requirements, the CTA received many complaints from passengers alleging air carriers did not accurately communicate the reasons for flight delays or cancellations. On February 13, 2020, we opened an inquiry into these complaints and appointed the CTA's Chief Compliance Officer as the Inquiry Officer. He undertook to establish the facts associated with flights related to the respondent air carriers and determine any particular trends or issues to be flagged.

The Inquiry Officer conducted an investigation from February 24, 2020, to September 30, 2020. As a result of the COVID-19 pandemic, there was an interruption from March 18, 2020, to June 30, 2020. The inquiry focused on 567 complaints related to 182 flights operated by Air Canada, WestJet, Swoop, Sunwing, Air Transat, and United Airlines.

The Inquiry Officer submitted an [Inquiry Officer's Report](#) on October 1, 2020. He found multiple communication issues leading to passenger frustration. The evidence did show that information provided to passengers about the reasons for the flight disruptions was inadequate, terse and unclear.

He found no evidence that the airlines deliberately mischaracterized the reasons for delays and cancellations. The report highlighted issues related to how the airlines categorized flight disruptions within their control, within their control but required for safety, or outside their control.

For issues outside the airline's control, there were questions about:

- the definition of "scheduled maintenance" and
- the impact of disruptions to earlier flights on later flights, also known as "knock-on effects."

How flight delays and cancellations are categorized is critical. Under the APPR, these categories affect passenger entitlements, including the right to compensation for the inconvenience.

The fact-gathering stage is complete, and this inquiry has moved to the adjudication stage at the time of writing. Pleadings have opened on [various questions of interpretation](#) relating to the APPR. Interested persons have been invited to [file position statements](#) on these questions.

The decision on questions of interpretation will facilitate the resolution of the 567 complaints. This decision will be important for the application of the APPR in the future.

Once this stage of the proceeding is complete, a process will be set out for considering the merits of the 567 complaints.

Tanski v Air Canada (Decision No. 51-C-A-2020)

The applicants filed an application against Air Canada, stating that the airline refused to transport them from Toronto, Ontario, to Bogotá, Colombia. The airline had refused to transport them because the Canadian Food Inspection Agency's International Health Certificate issued to their pet dog did not comply with Colombian entry requirements. Those entry requirements were set out by the International Air Transport Association's (IATA) Travel Information Manual (TIMATIC).

Air Canada was provided evidence that the Canadian health certificate complied with Colombian entry requirements. Air Canada would not accept that evidence.

Air Canada was ordered (Decision No. 51-C-A-2020) to amend its tariff to include that the document requirements applied by the carrier are those provided by the IATA in the TIMATIC. It was also ordered to provide a website where customers could find these requirements and communicate this information to passengers in advance of travel (for example, posting it on its website and including a notice on its tickets).

Mony v Porter (Decision 59-C-A-2020)

The applicants filed a complaint against Porter Airlines regarding lost baggage containing items belonging to both of them, as well as a flight delay.

The applicants estimated the lost baggage was worth \$4,760. Porter provided the applicants \$2,097, in line with their maximum liability under the Montreal Convention. The applicants' credit card company refunded \$992 for lost items. The applicants sought the remaining amount of \$1,871 from Porter, arguing each passenger was entitled to the maximum amount under the Montreal Convention. Porter Airlines argued its liability for lost baggage extended only to the passenger who checked the piece of baggage.

The CTA found the Montreal Convention applies only to the passenger who checked the piece of baggage. It found that Porter Airlines properly applied the terms and conditions set out. However, Porter was ordered to compensate the applicants for a taxi fare expense incurred due to their late flight, as required under its tariff.

***Qian v Air Canada* (Decision No. 42-C-A-2020)**

The applicant filed a complaint against Air Canada for refusing to allow her to travel. The airline also imposed a ban on her due to the purchase of several airline tickets using a fraudulent credit card on a social media platform.

The applicant argued that:

- at the time she was refused travel, she had a valid ticket;
- she was not aware that the ticket, and the tickets she had previously used, were purchased fraudulently;
- the travel ban meant she would not be allowed to travel with Air Canada until reimbursing it for the cost of the previous fraudulent tickets;
- this was unfair as she was a victim of the fraud;
- Air Canada should have identified the fraud earlier and notified her so that she would not continue to fall prey to the fraud.

During the CTA's proceeding, Air Canada removed the condition that the complainant reimburses it for tickets that she had previously used that were purchased fraudulently. However, Air Canada maintained the travel ban unless she could show, at the time of travel, that she has a valid ticket meaning the tickets were purchased through Air Canada or an accredited travel agent.

The CTA found that :

- Air Canada did not properly apply its tariff when issuing the initial travel ban;
- Air Canada's terms and conditions related to refusal to transport do not allow it to ban passengers because of fraudulent behaviour; and
- Air Canada's refusal to transport her, and its requirement that she show a valid ticket before allowing her to travel, are within the terms and conditions of its tariff, given the applicant's history of travelling on fraudulent tickets.

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



Overview

Accessible transportation is a human right. It allows persons with disabilities to achieve full and equal participation in contemporary life.

Since 1988, the CTA has had the mandate to protect the fundamental right of persons with disabilities to an accessible federal transportation network. To implement this mandate, we:

- create regulations for accessibility;
- develop guidance materials;
- promote awareness of those regulations through proactive communications and outreach;
- monitor and enforce compliance through inspections, investigations, corrective actions and administrative monetary penalties; and
- resolve disputes about accessibility through facilitation, mediation and adjudication.

Highlights from 2020–2021

Accessibility Advisory Committee meeting

The CTA has a standing Accessibility Advisory Committee (AAC), composed of persons with disabilities, transportation service providers and other interested stakeholders.

We consult the AAC for advice on accessibility issues and for guidance in developing accessibility-related regulations.

We held a virtual AAC meeting on December 4, 2020, which included in-depth discussions with ASL/LSQ interpretation and English and French closed captions. Members discussed the impact of COVID-19 on the disability community and the transportation sector and shared other updates.

Coming into force of the ATPDR

This year marked an important milestone in accessible transportation, the coming into force of most provisions of the [Accessible Transportation for Persons with Disabilities Regulations](#) on June 25, 2020. The CTA developed the ATPDR based on extensive consultations with the disability community and transportation service providers, members of the public and experts over more than two years.

The ATPDR establishes comprehensive, legally binding requirements for accessible travel. The ATPDR covers all modes of transport under our jurisdiction, including air, and interprovincial and international passenger rail, bus, and ferry. The accessibility requirements in the ATPDR are enforceable by administrative monetary penalties.

These accessibility regulations cover a wide range of matters, including:

- training;
- communications;
- services;
- technical requirements; and
- security and border screening by the Canada Border Services Agency (CBSA) and the Canadian Air Transport Security Authority (CATSA).

To support the coming into force of the ATPDR, we posted [13 guides](#) related to [new obligations under those regulations](#).

ATPDR Phase II – Consultation on accessible transportation guidelines for medium and small transportation service providers

With the ATPDR in place, the next step to continue advancing its accessibility mandate was for the CTA to hold [consultations on Phase II of the ATPDR](#) from December 3, 2019, to February 28, 2020, to hear input on three key outstanding issues from the ATPDR:

- the One Person, One Fare (1P1F) requirement for international travel and small transportation service providers,
- the carriage of emotional support animals (ESAs) in travel, and,
- how the ATPDR should apply to smaller transportation service providers.

The consultations revealed a great deal of disagreement and concern around ESAs, and possible challenges in the context of Canada's treaty obligations if the 1P1F requirement were to be extended to international flights. For these reasons, we have chosen not to develop regulations in these areas for the time being. We will continue to:

- examine options and tackle individual ESA-related complaints filed by travellers with disabilities in order to determine how to best address ESA issues raised by passengers with disabilities;
- increase attention to accessibility in international transportation forums, including the International Civil Aviation Organization (ICAO); and,
- encourage common approaches that remove barriers for persons with disabilities.

Our consultations also showed that further discussions are needed on applying the ATPDR in the unique operating environment of smaller transportation service providers, including those in Canada's North. That's why we held [consultations on guidelines for small and medium transportation service providers](#) from December 2, 2020, to March 31, 2021. We'll use this input to finalize guidelines in 2021 to help transportation service providers meet human rights obligations under Part V of the [Canada Transportation Act](#). These guidelines will provide the basis for binding regulation. Our goal is to have the regulation in place by 2022.

Regulations Amending the Accessible Transportation for Persons with Disabilities Regulations and CTA Designated Provisions Regulations

The CTA has made [new regulations](#) to ensure that our accessibility-related orders can be enforced through monetary penalties of up to \$250,000. These new regulations also correct minor errors and inconsistencies to ensure the ATPDR is as clear as possible. They came into force on February 5, 2021.

Accessible transportation planning and reporting regulations development

The [Accessible Canada Act](#) (ACA) came into effect in July 2019. Among other things, it requires the CTA to develop planning and reporting regulations for transportation service providers.

In line with the ACA, the CTA has developed proposed *Accessible Transportation Planning and Reporting Regulations* (ATPRR). Input received in consultations with persons with disabilities and transportation service providers – held from December 2019 to February 2020 – helped shape the proposed regulations. The ATPRR was published on February 13, 2021, for a 65-day public review and comment period.

The ATPRR will implement accessible planning and reporting obligations under the ACA for transportation service providers, which include:

- developing and publishing an accessibility plan for achieving barrier-free operations,
- establishing a process to receive feedback regarding the implementation of the accessibility plan and the removal of any barriers in operations, and,
- preparing and publishing progress reports on the implementation of the plan.

The regulations also set out important details, such as formats and timing of the first accessibility plan.

Under the ACA, the CTA, Employment and Social Development Canada (ESDC), and the Canadian Radio-television and Telecommunications Commission (CRTC) are developing parallel regulations for entities and matters under their jurisdiction. We have worked closely with them to align planning and reporting requirements to the extent feasible, including timelines. We will continue working in lockstep towards the goal of publishing final regulations in 2021.

“No Wrong Door” initiative

The ACA mandates the CTA, along with other federal organizations –the Canadian Radio-television and Telecommunications Commission, the Canadian Human Rights Commission, Federal Public Sector Labour Relations and Employment Board and Accessibility Commissioner – to work together on “No Wrong Door” measures that

ensure people wishing to file accessibility-related complaints are promptly and seamlessly referred to the right agency.

These organizations, together with the Canadian Human Rights Tribunal, established a Council of Federal Accessibility Agencies in August 2019. The Council will engage stakeholders to ensure that the perspectives of persons with disabilities inform its work. The Council is working on the transfer process between organizations and improving web communications to clarify where to file a complaint.

The Council is planning to meet with organizations representing persons with disabilities in Spring 2021.

Safe securement and containment of mobility aids during transport

Mobility aids are essential to the mobility and ability of their users to lead independent lives. Over time, mobility aids have become increasingly customized to their users and have grown in size and technological sophistication. Along with these advancements have come the associated challenges of transporting highly complex mobility aids without causing damage.

In 2018–2019, the CTA established an International Working Group (IWG), which was tasked with identifying concrete, actionable options to address issues related to the safe storage and transportation of mobility aids during air travel. The IWG – composed of airlines, persons with disabilities, aircraft manufacturers, mobility aid manufacturers, ground handlers, and regulators from other jurisdictions – produced a [Mobility Aids and Air Travel Report](#) in May 2019. The Report contained short-term and medium-term recommendations along with additional issues that require further consideration.

Following one of the recommendations in this report, the CTA, the National Research Council Canada (NRC) and Transport Canada have undertaken more in-depth research and analysis on securement and containment of mobility aids in the cargo compartment with the goal of reducing damage to mobility aids.

The outcome of the research will include:

- performance guidelines and best practices,
- development of a prototype tool that includes standardized cargo door dimensions of aircraft in Canada, and,

- investigation of a possible new containment strategy to mitigate damage to mobility aids and decrease injuries to ramp personnel.

The final report is expected in spring 2021.

SSR codes project

The CTA is launching a project with the NRC – and with the active involvement of the International Air Transport Association – to improve the services provided to persons with disabilities during international air travel.

This work will focus on Special Service Requests (SSR) codes. These codes relay travel-related information, including disability information about passengers, such as the passenger travelling with a mobility aid or is visually impaired – between airlines and airports. The project will provide:

- a better understanding of how the SSR codes are communicated and implemented, and,
- identify areas for future improvement.

Working group meetings involving airlines, airports, the disability community, and other interested stakeholders will begin later in 2021.

ICAO

The CTA continues to pursue work with federal partners to raise the profile of accessibility at ICAO. One key project is a state survey to collect information in order to develop a compendium of accessibility-related laws and regulations as a first step towards the identification and promotion of best and more consistent practices in accessible transportation. This project – although delayed due to COVID-19 – will close some knowledge gaps about accessible travel worldwide. We will continue working to advance this project in 2021–2022.

Dispute resolution highlights

Accessibility applications and outcomes

In 2020–2021, the CTA received 174 accessibility complaints. This represents a slight decrease from the two previous years (227 for 2019–2020 and 182 for 2018–2019), in line with the decrease of air travel due to the COVID-19 pandemic. Of the cases resolved:

- 105 were resolved through facilitation,
- 54 were resolved through mediation, and
- 15 were resolved through adjudication.

Accessible transportation complaints help line

As of March 2021, we answered 48 inquiries through the Accessible Transportation Complaints Help Line (1-844-943-0273). This is a confidential, toll-free telephone line to answer questions relating to accessible transportation complaints. CTA staff answered questions this year relating to a wide range of questions and concerns, such as:

- how to file a complaint with the CTA;
- how a person with a visual disability can obtain curbside assistance upon arrival at the airport.

Key proceedings and decisions

Request to exempt certain carriers from s. 62 of the ATPDR

The CTA has received a request from the National Airlines Council of Canada and Airlines for America to temporarily exempt its member carriers, under subsection 170(4) of the [Canada Transportation Act](#), from section 62 of the ATPDR. Section 62 requires air carriers to advise a person with a disability who uses a mobility aid and who makes a reservation for international travel of the option to make a special declaration of interest, under Article 22(2) of the Montreal or Warsaw Conventions, that sets out the monetary value of their mobility aid and a description of its identifying features.

After consulting with the Minister of Transport, the CTA has the authority to issue an exemption when it is satisfied the person has taken or will take measures to remove barriers or prevent new barriers. These measures must be at least equivalent to those that must be taken under the provisions of the regulations for which an exemption is to be granted. This is also known as a “meet or beat” provision.

During international travel, mobility aids are subject to the limits of liability established by the Montreal or Warsaw Conventions. Article 22(2) of the Montreal Convention and Article 22(2) of the Warsaw Convention establish a monetary limit to a carrier's liability for lost or damaged baggage unless a higher value has been declared through a special declaration of interest.

Section 62 of the ATPDR specifically provides protections for persons with disabilities who undertake international travel with a mobility aid. It requires carriers to inform a person of the option to make a special declaration of interest when travelling with their mobility aid.

Members of the disability community and other interested stakeholders have had an [opportunity to comment](#) during the consultation period. We will issue a decision in due course.

Leduc v Air Canada (Decision No. 101-AT-A-2020)

The applicants, who use power wheelchairs, filed a complaint with the CTA regarding the handling of their power wheelchairs by Air Canada, which they allege was not returned to them in their original state due to the improper handling of their batteries.

We found the applicants are persons with disabilities. We also found that two of them had encountered an undue obstacle to their mobility for two reasons. First, the batteries for their wheelchairs had not been re-activated by Air Canada. And second, although Air Canada knew that the information provided by the applicants about their wheelchairs was incomplete, it did not inform them that there was information missing. Such information was critical to ensure proper handling of their power wheelchairs.

Air Canada was ordered to take two preliminary correctives measures:

1. To send a notification to the handling personnel on the correct handling of mobility aids, including the importance of re-activating the batteries before returning a mobility aid to its owner.
2. When the passenger arrives at the airport, if the relevant form (the powered mobility aid information form) has not been filled out by the passenger or is not attached to the electric wheelchair, Air Canada must obtain the required information or have the passenger complete the form.

Since Air Canada had already carried out the first measure, there was no need to include the first measure in the final order. Air Canada was ordered to implement and maintain the second measure. This corrective measure puts the responsibility on Air Canada to ensure it has all of the necessary information from persons with disabilities in order to ensure the proper handling of mobility aids.

Liland v Air Canada (Decision No. 47-AT-A-2020)

The applicants claimed Air Canada refused to let them fly because one was travelling with an oxygen unit. They said the oxygen unit was a personal oxygen concentrator (POC) and not dangerous. Air Canada said the pilot believed it was an oxygen generator and was concerned as some countries have banned them for safety reasons.

The CTA found the applicant had a disability, as he requires medical oxygen to breathe. Air Canada's medical desk previously cleared the applicant to travel with his POC.

We also found that the pilot and first officer should not have assumed the POC was unsafe. They could have checked the list of pre-approved POCs or called Air Canada's medical desk for more information. The applicant faced a travel obstacle due to the misidentification of his POC and the refusal to allow him to travel.

Air Canada was ordered to:

- remind its flight deck employees about its air travel with POCs policy;
- send a memo and this bulletin to the pilot, first officer and crew involved in the incident.

Bark v VIA Rail Canada Inc. (VIA) (Decision No. 6-AT-R-2021)

The applicant, who uses a power wheelchair, alleged that VIA's removal of the wheelchair tie-down restraints (tie-downs) from its train posed a safety concern and caused her pain when travelling due to her wheelchair not being restrained. She requested VIA to reinstate the tie-downs.

The CTA found the applicant is a person with a disability but did not face a barrier to mobility. VIA Rail had verified that no laws or regulations required tie-downs in trains, conducted a risk assessment, held working sessions with groups representing affected passengers, and commissioned two reports with an external consultant.

VIA also conducted a test with the applicant. This test found the safety of the applicant and her wheelchair were never compromised and concluded that the use of tie-downs reassures the applicant but does not improve her safety and does not prevent her from having pain and numbness. Following the testing, VIA provided suggestions to address her feeling of insecurity, including:

- keeping her arms close to her body to lower her center of gravity when travelling,
- lowering the height of the wheelchair, and
- having a bar installed on the wheelchair to improve her center of gravity.

After having considered both the applicant's subjective experience and the objective evidence, we found that the applicant did not demonstrate that the removal of the tie-downs represents a barrier. The application was dismissed.

Accessibility-related observations

Under a new provision in the [Canada Transportation Act](#) – added by the [Accessible Canada Act](#) in June 2019 – the CTA is required to report on systemic issues that it observes in making accessibility-related orders and undertaking enforcement activities.

This year we did not observe any issues specifically arising from these activities. However, we share concerns raised by the disability community that disruptions caused by COVID-19 may stall or even move back progress on accessibility in the transportation network. Concerted efforts are needed to make sure that doesn't happen. There are two core arguments for incorporating accessibility into the recovery process:

- basic decency and respecting the fundamental right to equal access, and
- return on investment when improved accessibility is real and sustained.

Accessibility must remain at the forefront as operations rebuild from the effects of COVID-19.

Serving the needs of travellers with disabilities is also good business sense: it will be an important step towards transportation service providers' economic recovery. In October 2020, the Chair and CEO of the CTA delivered a presentation on this theme, [Accessibility and recovery: Breaking barriers to travellers with disabilities as aviation rebuilds](#), at the International Air Transport Association Global Accessibility Symposium.

The CTA has also noted that measures to contain COVID-19 could unintentionally create barriers to accessibility. These include masks and physical distancing. That's why the CTA and Transport Canada mandated the National Research Council to develop a guide on best practices during the pandemic. Our goal is to remove and avoid unintended accessibility barriers caused by new health and safety measures.

Ensuring that the national transportation system runs smoothly and efficiently



Overview

The CTA's oldest mandate, and the one with the greatest economic impact, is to keep the national transportation system running efficiently and smoothly. This is done in the interests of the Canadians who work and invest in it; the producers, shippers, travellers and businesses who rely on it; the communities where it operates, and the country's prosperity and social fabric as a whole.

For example, we:

- administer an air licensing and charter permit regime, and oversee air navigation services charges;
- issue certificates of fitness for federal railway companies and enforce compliance with minimum insurance requirements;
- determine railway costs, approve railway line construction, oversee the discontinuance of service, and establish the net salvage value of railway lines;
- determine rail interswitching rates and the maximum revenue entitlement for the movement of western grain;
- resolve disputes between railway companies and shippers over rates or level of service, and between railway companies and individuals or communities affected by railway noise and vibration; and
- determine whether suitable Canadian vessels are available when coasting trade licence applications are made to use foreign vessels.

Highlights for 2020-2021

Air regulatory activities

Air licensing

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

In addition to continual air licensing and charter processing during the COVID-19 pandemic (reported above), we issued new licences for scheduled international services between Canada and the following countries:

Table 9: New scheduled international services

| Canadian airlines | Country |
|-------------------------------------|--|
| Nolinor Aviation et/and Nolinor OWG | United States of America |
| Cargojet Airways Ltd. | Japan |
| Swoop Inc. | Dominican Republic |
| Swoop Inc. | Cuba |
| WestJet | Bonaire, Sint Eustatius and Saba |
| Nolinor Aviation et/and Nolinor OWG | Cuba |
| WestJet | United Kingdom of Great Britain and Northern Ireland |

In 2020–2021, we issued 94 new licences, 49 to Canadian airlines and 45 licences to foreign airlines. We also issued 464 suspensions, of which 408 were initiated by us, and the remaining 56 were initiated by the applicant.

For other air licensing statistics, see our [2020–2021 Statistics](#).

Exemption order from the filing periods for tariffs and service schedules

On February 10, 2021, the CTA issued Order No. 2021-A-3. Specifically, the order exempted airlines operating an international service from requirements in the [Air Transportation Regulations](#) (ATR) to:

- file their tariffs with us at least 45 days before their effective date.
- file their service schedules with us at least ten days before their effective date.

Under this order, airlines can file their terms and conditions of carriage with us on as little as one day's notice before they come into force. Fares, rates, charges and service schedules may come into force immediately upon filing.

We recognized that the aviation industry had experienced significant evolution and change since the introduction of the ATR. The Internet is now the primary source for providing information, and airlines need to have the ability to implement changes quickly to respond to market conditions. In a competitive market, air carriers should be able to quickly update their fares, rates and charges, terms and conditions, and schedules to respond to operational and competitive considerations, as well as government actions.

The order allows airlines to rapidly change their tariffs and service schedules and reduces administrative burdens associated with a tariff filing regime. Air carriers also benefit from a level playing field in respect of filing times.

International air transport agreements

The CTA takes part in the negotiation and implementation of international air transport agreements. We are part of the Government of Canada negotiating team. The negotiating team also includes Transport Canada and Global Affairs Canada. We contribute subject matter expertise about Canadian legislative and regulatory requirements.

In 2020–2021, we took part in negotiations resulting in one new and three expanded air transport agreements.

The post-Brexit air transport agreement between Canada and the United Kingdom was finalized on November 30, 2018. On December 31, 2020, we began to apply the agreement on an administrative basis. This followed the end of the post-Brexit transition period.

Air determinations and decisions

WestJet v NAV CANADA (Decision No. 4-A-2021)

WestJet appealed an increase in NAV CANADA's charges for the service it provides that is required due to the pandemic-related collapse in air traffic. WestJet argued that NAV CANADA failed to follow the charging principles in the *Civil Air Navigation Services Commercialization Act* (CANSCA). They also alleged that NAV CANADA was not transparent in its consultation process or in creating the revised charges. NAV CANADA disputed WestJet's claims.

The CTA dismissed WestJet's appeal. It found that NAV CANADA complied with both of the charging principles identified by WestJet. NAV CANADA's forecasting methods were reasonable, as it sought to model the impact of the COVID-19 pandemic on future air travel. The following was noted:

- the pandemic caused significant uncertainty in the air travel industry at the time of the determination of the revised charges.
- it would be extremely difficult to project traffic levels with any degree of certainty in these circumstances.
- NAV CANADA had demonstrated that it had undertaken mitigation efforts to reduce its costs in the face of the pandemic's impacts.

NAV CANADA was found to have complied with the notice and disclosure requirements set out in the CANSCA. The CTA did not have jurisdiction to consider allegations of a breach of procedural fairness.

First drone air cargo licence

On October 26, 2020, the CTA issued the [first licence in Canada](#) for the commercial operation of an air service using drones. This commercial cargo delivery service includes both within line of sight and beyond visual line of sight services.

Operators require a licence to operate a publicly available commercial air service to transport goods using a drone.

Rail regulatory activities

Consultation on the Regulated Interswitching Regulations

In August 2020, the CTA launched [consultations on possible regulatory changes to the Regulated Interswitching Regulations](#). These consultations considered issues such as rate billing and the number of interswitching zones. They concluded in the fall of 2020. We have reviewed stakeholder input and will continue to monitor the effectiveness of the Interswitching regulations. No regulatory amendments are being pursued at this time.

Consultation on cost of capital rates

In September 2020, the CTA launched a [consultation on issues related to the determination of cost of capital rates](#). The cost of capital is an essential aspect of the determination of regulated rates. It is used annually in determining the Volume-Related Composite Price Index (VRCPI) and Maximum Revenue Entitlement (MRE) of CN and CP. We are now reviewing all submissions that were provided in the first two rounds. We will launch a final round in the spring of 2021, with an aim to resolving the full consultation within the 2021–2022 crop year for Western Grain.

Rail dispute resolution

Part of the CTA’s mandate is to help resolve disputes between railway companies and their customers or neighbours. The types of disputes include:

- interswitching;
- freight rail service obligations,
- noise and vibration, and
- the transfer and discontinuance of rail lines.

In total, we resolved 61 rail disputes in 2020–2021:

- 33 through facilitation,
- 20 through mediation,
- 5 through adjudication, and
- 3 through arbitration.

In 2020–2021, we answered 143 inquiries through the Rail, Shipper and Community Help Line.

For other rail-related statistics, see our [2020–2021 Statistics](#).

Key decisions and determinations

Maximum Revenue Entitlement (MRE) program for transporting Western grain by rail

Each year, the [Canada Transportation Act](#) requires the CTA to determine the maximum revenue that CN and CP can earn for transporting regulated Western grain, using a formula set out in the Act. Whether or not each railway company exceeded those entitlements is based on several factors:

- the volume of grain,
- the average length of haul, and
- the applicable volume-related composite price index.

In December 2020, the CTA determined (R-2020-207) that CN and CP both exceeded their respective maximum revenue entitlements for the 2019–2020 crop year.

Table 10: 2019–2020 Maximum revenue entitlements

| Company | Entitlement | Grain revenue | Amount above (\$) |
|---------|---------------|---------------|-------------------|
| CN | \$930,331,426 | \$933,502,041 | \$3,170,615 |
| CP | \$997,060,798 | \$999,230,808 | \$2,170,010 |

As stipulated in the [Canada Transportation Act](#), CN and CP were ordered to pay the excess amount, plus a 5% penalty, to the [Western Grains Research Foundation](#) (a farmer-funded and directed organization) within 30 days. Confirmation these amounts were paid by both railways within the prescribed deadline was received.

See a [list of MRE determinations](#) and our [MRE guide](#), which explains how the MRE Program works.

Determination of the 2021 regulated interswitching rates

In Determination No. R-2020-194, the CTA completed its [Review of the approach for setting regulated interswitching rates](#). This determination addressed:

- the methods for assessing productivity,
- the appropriate contribution to fixed costs,
- the rates for 2021.

The CTA is required to publish the rates in *Canada Gazette* by December 31 of each year. We will determine the 2022 regulated interswitching rates no later than December 1, 2022.

Xinyi v Canadian National (Decision No. 85-R-2020)

Xinyi Canada applied to the CTA seeking interswitching of its traffic for a proposed manufacturing facility in Ontario. The location for its proposed facility is within a 30 km radius of the Woodstock interchange and a 39.81 km radius of the London interchange. Xinyi Canada argued its proposed facility is reasonably close to the London interchange. CN contested this, seeking to interchange at Woodstock.

The CTA noted that section 127 of the [Canada Transportation Act](#) provides it with broad discretion to determine whether an interchange is reasonably close to order extended interswitching. The Woodstock interchange is within a 30 km radius of Xinyi Canada's facility. The issue was whether we have the authority to deem an interchange to be reasonably close to the point of origin or destination if a shipper is already eligible for regulated interswitching. We found that we have the authority to do so when another interchange is within a 30 km radius of a point of origin and destination. We cautioned that even if we have this discretion, we will exercise it only when there may be particular circumstances to do so.

We needed to consider whether the London interchange is reasonably close to Xinyi Canada's facility. We gave primary consideration to the distance (radial and track). The track distance from the facility to the London interchange is 44.6 km and 87 km to the Woodstock interchange. Other considerations included the circumstances of the case, the service issues, and the competitive position. Due to the unusual circumstances (i.e., that the London interchange was to be used for interswitching regardless of the interchange ordered), the London interchange was found to be reasonably close to the location of the proposed facility. CN was ordered to interswitch Xinyi Canada's traffic with CP at the London interchange.

Scotford Subdivision extension (Determination No. R-2020-65)

CP filed a complete application in 2019 to construct the Scotford extension in Fort Saskatchewan in Alberta. This project expands CP's existing freight rail service. A public comment period was opened in October and November 2019. At the same time, Indigenous groups were consulted for their input. In Determination no. R-2020-65, the CTA approved CP's application subject to conditions. The conditions relate to:

- limiting the impacts on the rights and title of Indigenous peoples,

- noise and vibration,
- surface and groundwater,
- human health, and
- protection of archaeological and cultural resources.

Champlain Spur relocation (Determination No. R-2020-166)

CN filed a complete application for approval to move a part of the Champlain Subdivision railway line in Quebec City. The relocation will move the existing railway line closer to the adjacent cliff face, away from the St. Lawrence River. This move will allow the development of the promenade Samuel-De Champlain for public use. A public comment period was conducted on the application that included the local community and Indigenous groups. In Determination No. R-2020-166, the CTA approved CN's application subject to conditions. The conditions relate to:

- noise,
- slope stabilization, and
- protection of archaeological and cultural resources.

Milton Logistics Hub Project

In 2016, CN applied to develop a proposed Milton Logistics Hub. The Minister of Environment and Climate Change and the Chair and CEO of the CTA established a process to collect information jointly for:

- the environmental assessment of the project, and
- consideration of the application for railway construction.

A Review Panel was established, and a CTA Member was appointed to the panel. This Member is reviewing CN's application under Section 98 of the [Canada Transportation Act](#). The Member will decide whether the location of the railway line is reasonable, taking into consideration requirements for railway operations and the interests of the localities.

On January 27, 2020, the Review Panel issued its report. It determined there was potential for the project to cause significant adverse environmental effects. The Panel made recommendations, including proposed mitigation measures to reduce the significance of environmental effects, to the Minister of Environment and Climate Change.

On January 21, 2021, the Minister of Environment and Climate Change announced that the project could move forward despite its environmental impacts, provided 325 conditions were met. This announcement followed Cabinet’s decision that the significant adverse environmental effects the Milton Logistics Hub is likely to cause are justified in the circumstances. The focus will now shift to the Section 98 application. A determination will be rendered once deliberations are complete.

Marine regulatory activities

Coasting trade applications

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

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

In 2020–2021, the CTA processed 36 coasting trade applications. There were 29 applications where no offer to use a Canadian vessel was made and nine contested coasting trade applications (that is, where a party offered a Canadian vessel that it argued was suitable and available for the work).

The total number of coasting trade applications dropped by 45% in 2020–2021 compared to the previous year.

The percentage of contested applications has increased by 125% over the previous year.

Marine determinations and decisions

Shipping Federation of Canada v the Pilotage Authorities (Decision No. 105-W-2020)

The Shipping Federation of Canada (SFC) filed notices of objection against the Atlantic, Laurentian, Pacific and Great Lakes Pilotage Authorities. The *Pilotage Act* creates an obligation for pilotage authorities, upon request, to make payments to the Minister. These payments relate to Transport Canada’s costs of administering and enforcing the *Pilotage Act*. The payments don’t relate to the costs of services from the pilotage authorities.

The SFC objected to administrative charges each pilotage authority intended to introduce through tariff amendments. These charges are the costs of payments requested by the Minister of Transport. The SFC argued that the pilotage authorities could not include the charges in their tariffs. They also argued that the charges were not set within statutory requirements and were not in the public interest. The pilotage authorities argued the charges complied with all aspects of the [Pilotage Act](#).

The CTA found in favour of the pilotage authorities, finding that:

- the proposed charges were permitted under the [Pilotage Act](#);
- the pilotage authorities had set the charges under the charging principles prescribed by the [Pilotage Act](#); and that,
- the proposed charges were not against the public interest.

The CTA recommended the pilotage authorities implement the charges.

Other CTA initiatives



Guidance renewal

To advance its mandate, the CTA issues a range of publications to help transportation providers and users understand their rights and legal responsibilities, as well as its legislation, regulations and services.

Last year, we launched our Guidance Renewal Project to ensure that our guidance documents continue to provide accurate and up-to-date information and meet users' needs.

As part of this project, in 2020–2021, we [provided additional information in guides](#) on the [Air Passenger Protection Regulations](#), based on feedback from users.

We posted [13 guides](#) related to [new obligations under the ATPDR](#) and updated them based on consultations with transportation service providers, persons with disabilities, and other interested stakeholders.

In addition, we issued revised guides on:

- air arrangements (code-sharing, wet-leasing) and insurance requirements,
- [international air charters](#),
- the [maximum revenue entitlement](#) for federal railways,
- [freight rail service and rates](#), and
- [railway crossings](#).

Guidance renewal work will continue in 2021–2022, as we complete the update of guides relating to air, rail and marine transportation.

Sample tariff 2021

This year, the CTA completed a major revision to its [Sample Tariff](#) by updating it and incorporating the key regulatory requirements of the APPR and the ATPDR that airlines must meet or exceed.

The Sample Tariff is a tool to assist airlines in meeting their regulatory obligations – including the APPR and the ATPDR, to simplify the language used in tariffs, to convey examples of common terms and conditions of carriage, and to help the public find information. Airlines can refer to this document in developing and updating their tariffs.

Indigenous consultation framework

The Crown has a duty to consult Indigenous peoples when it contemplates an action that may affect established or asserted Indigenous rights or interests.

As an independent regulatory tribunal, the CTA may not be the “Crown” in the strictest sense. Moreover, few of our determinations would be expected to affect Indigenous rights and interests. However, some of our authorizations may trigger the Crown’s duty to consult and accommodate Indigenous groups. Specifically, this duty could arise with regard to applications for railway line construction.

After sharing our [Indigenous Consultation Framework](#) (ICF) with Indigenous representative organizations and other key stakeholders, we published this document in March 2021. The document outlines:

- when the duty to consult may be triggered by actions under consideration by the CTA,
- how we will ensure this duty is fully and honourably discharged, and
- the processes and tools we will use to do so.

Modernization of the compliance monitoring and enforcement program

The CTA regulates over 1,500 service providers in the air, rail, marine and interprovincial bus sectors. We verify compliance with over 700 provisions enforceable by means of an administrative monetary penalty, almost triple from two years ago. We also issue enforceable orders to address complaints and findings of non-compliance with statutory and regulatory provisions.

In 2020–2021, the CTA completed a project to modernize the compliance monitoring and enforcement program. We drew on best practices within Canada and worldwide and adopted new verification approaches and tools to foster and ensure compliance by regulated entities.

The new program continues to:

- ensure compliance with CTA orders,
- follow up on credible information about possible contraventions of legal requirements, and
- ensure the maintenance of mandatory liability insurance coverage by railway companies.

Our risk-based approach directs more resources to where the likelihood or impact of non-compliance is higher. As part of this approach, we are configuring software that will analyze data and produce rigorous risk assessments that will help us target finite compliance resources.

We consulted with data experts from the National Research Council for advice in linking our data to the risk software and methods for using data to uncover compliance trends. We added new Data and Business Analyst resources to implement these new tools and methods to provide greater insights into where we should focus our compliance activities.

Other developments in enforcement

Automatic licence suspension process

This year, the CTA also strengthened review processes for the required liability insurance held by airlines.

They must file a new insurance certificate before it expires. If we don't receive a new insurance certificate before the one on file expires, the airline's licence is immediately suspended. Airlines can have their licence reinstated when they file an appropriate insurance certificate with us.

Revisions of certificates of fitness for federally-regulated railway companies

The [Canada Transportation Act](#) prescribes the minimum insurance coverage federally-regulated railway companies must maintain if their operations include the carriage or hosting of freight traffic. In particular, railways must carry required minimum insurance based on the type and volume of dangerous goods carried, including crude oil. The CTA is responsible for enforcing these requirements.

In 2020, we reviewed the certificates of fitness of all railway companies that carry or host freight traffic. Based on this review, we varied twenty-one (21) certificates of fitness (LET-R-34-2020) to ensure they held the mandatory insurance and improve public transparency in this important area.

The certificates of fitness now specify the following details:

- the volume of the prescribed goods the railway company is authorized to carry in a calendar year; and
- whether the railway company is allowed to carry crude oil.

Transportation industry trends



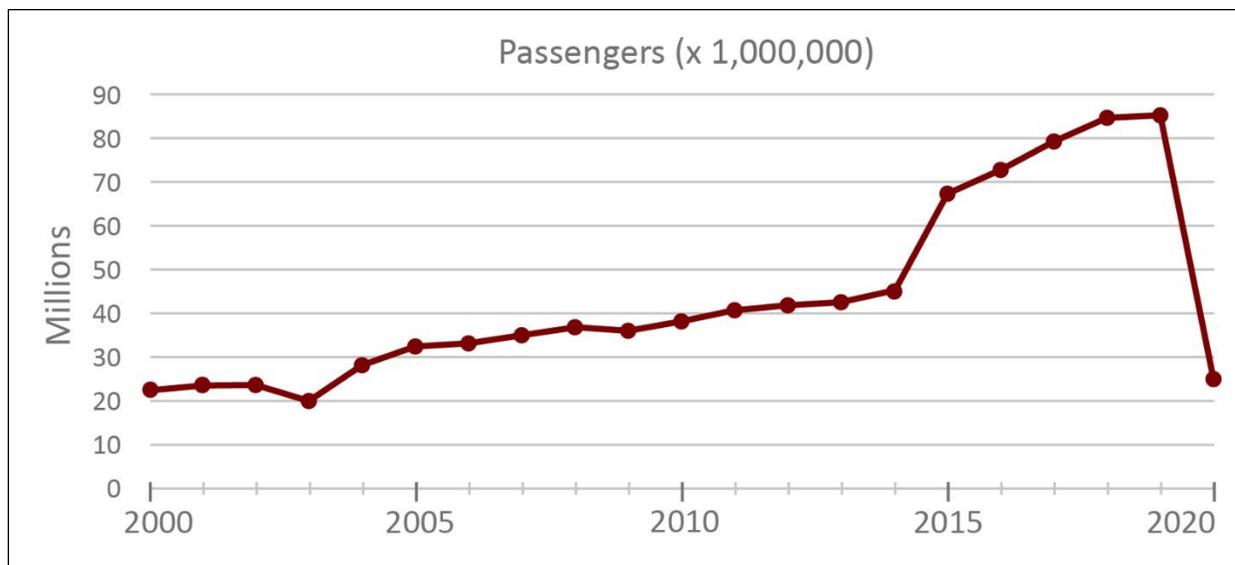
Air sector

Two major airlines dominate the domestic air sector in Canada: Air Canada and WestJet. These two airlines accounted for 90% of the total scheduled domestic seat kilometres in 2017. A variety of other regional, leisure and local airlines made up the remaining 10%.¹

In 2020, major Canadian airlines earned less than \$8.0 billion in operating revenues, the lowest recorded year of revenue in the past five years. This amount represents a decrease of 68.4% compared to 2019 and 55.2% since 2015.

Between 2015 and 2019, the number of passengers flown on major Canadian airlines increased by 25.5%. The number of passengers flown in 2020 was the lowest on record since 2003, declining by 71.0% from the 2019 level.

Figure 5: Passengers flown on major Canadian airlines in millions



Statistics Canada. Table 23-10-0079-01 Operating and financial statistics for major Canadian airlines, monthly (Accessed March 2, 2021)

Table 11: Passengers flown on major Canadian airlines in millions

| Year | Passengers flown (million) | Year | Passengers flown (million) |
|------|-------------------------------|------|-------------------------------|
| 2000 | 22.8 | 2011 | 40.3 |
| 2001 | 23.4 | 2012 | 42.2 |
| 2002 | 23.4 | 2013 | 42.7 |
| 2003 | 20.0 | 2014 | 45.1 |
| 2004 | 28.2 | 2015 | 68.1 |
| 2005 | 32.1 | 2016 | 73.5 |
| 2006 | 33.4 | 2017 | 79.5 |
| 2007 | 35.6 | 2018 | 84.0 |
| 2008 | 37.5 | 2019 | 85.5 |
| 2009 | 36.2 | 2020 | 24.7 |
| 2010 | 38.8 | | |

Developments in the air sector

Since the onset of the COVID-19 pandemic, the air transportation sector has faced staff layoffs, as well as significant declines in air passenger traffic, flight cancellations and grounding of planes. [Canadian Air Transport Security Authority \(CATSA\) reports](#) that air passenger traffic in Canada's top 15 airports decreased approximately 90% from April 2020 to March 2021 (relative to the previous year).

Travel within Canada has also been affected by domestic travel restrictions. For example, the four Atlantic provinces agreed to an isolation bubble from the rest of Canada on July 3, 2020. This bubble remained in place until November 25, 2020, when it was replaced by individual provincial restrictions.

Travel has also been impacted by new testing and quarantine measures. On January 6, 2021, the Minister of Transport issued an [Interim Order formalizing new COVID-19 testing requirements](#) for all air travellers coming to Canada. On February 12, 2021, the [Public Health Agency of Canada \(PHAC\) announced further measures](#). All travellers, with some exceptions, are required to take a COVID-19 test. A requirement to quarantine in government-authorized hotels was also introduced.

On March 30, 2020, the Minister of Finance [announced the Government of Canada would support the air industry](#) during the COVID-19 pandemic. It would waive ground

lease rents from March 2020 to December 2020 for the 21 airport authorities that pay rent to the federal government. This represented up to \$331.4 million of relief. The September 23, 2020 [Speech from the Throne](#) committed to providing subsidies to bridge vulnerable businesses to the other side of the pandemic.

On November 30, 2020, the [Fall Economic Statement 2020](#) was released. It included support to the air travel sector, including funding for airports to make investments in safety, security and transit infrastructure.

On April 12, 2021, the Government of Canada announced financial support for Air Canada. As conditions for this support, Air Canada must:

- provide refunds for pandemic-related cancellations,
- maintain or restore select regional air connections,
- guarantee no further layoffs, maintain pensions and collective agreements, and
- remain a customer of Canada's aerospace sector, namely completing its planned purchase of the Airbus A220 and other aircraft in the future.

Discussions with other Canadian air carriers were continuing at the time this report was finalized.

Rail sector

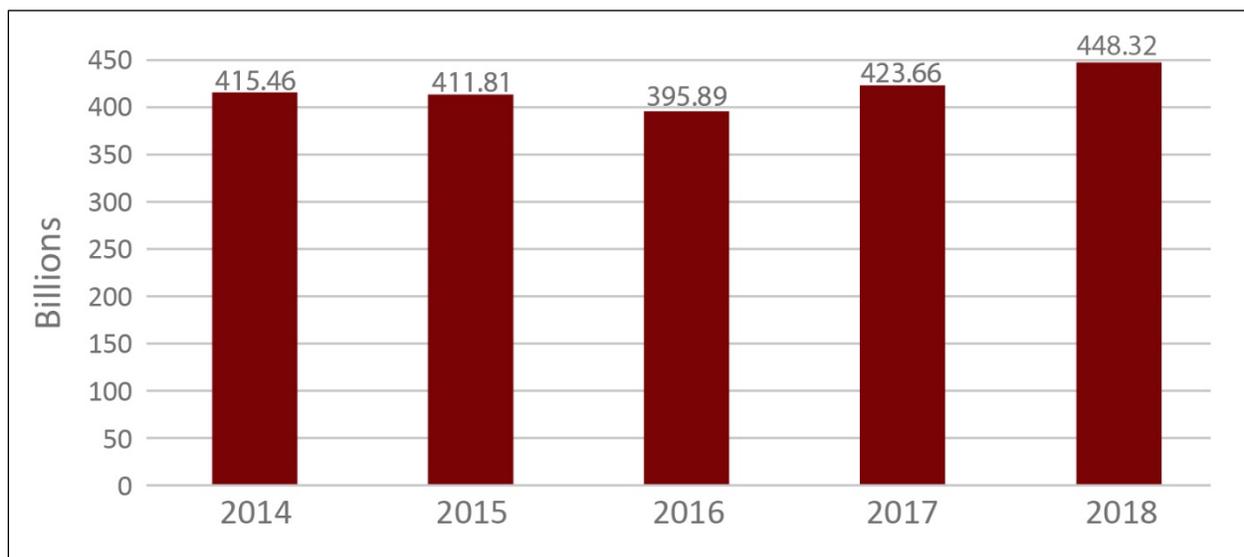
Canada's rail freight sector is made up of:

- two large railway companies operating mainlines, Canadian National Railway (CN) and Canadian Pacific Railway (CP), and
- several short-line railway companies operating many of the branch lines feeding into the mainline rail network.

Throughout the pandemic, CN and CP shipments of some commodities continued at levels comparable to previous years. These shipments include grain, coal, containers, farm products, and chemicals. Other shipments such as motor vehicles and petroleum products declined considerably.

While data from 2019 nor 2020 was not available at the time this report was finalized, some metrics for previous years are available. Revenue tonne-kilometres increased by an average of 3.2% between 2013 and 2018. Between 2017 and 2018, they increased by 5.8%. Class I railways accounted for 97% of all revenue tonne-kilometres in 2018.

Figure 6: Revenue tonne-kilometres



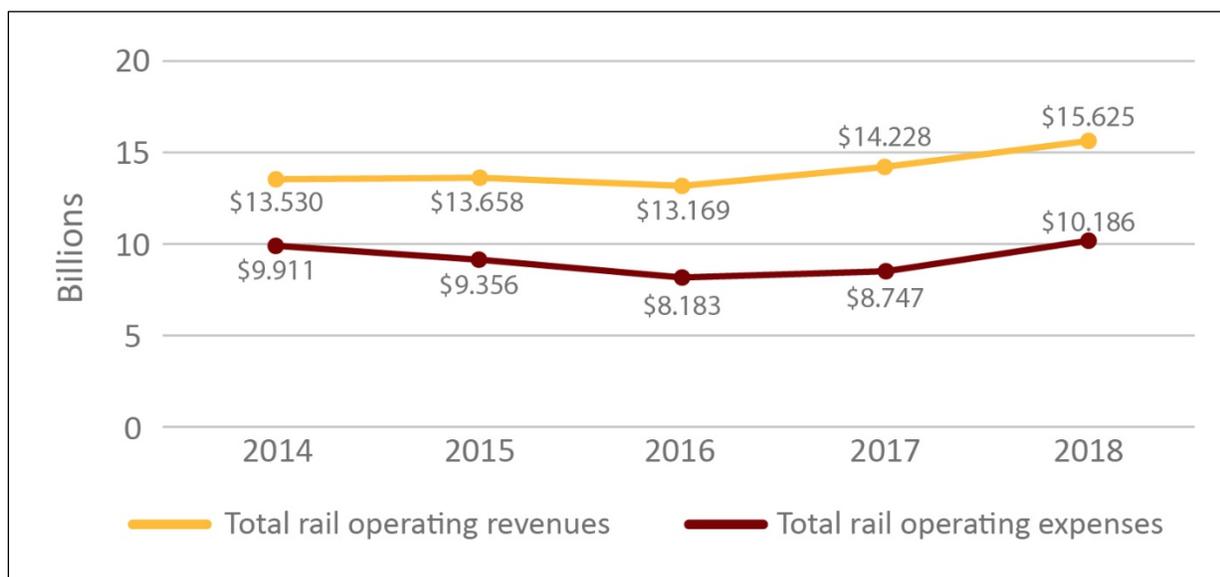
Source: Statistics Canada. Table 23-10-0057-01 Railway industry summary statistics on freight and passenger transportation (Accessed March 2, 2021)

Table 12: Revenue tonne-kilometres

| Year | Revenue (\$ billion) |
|------|----------------------|
| 2014 | 415.46 |
| 2015 | 411.81 |
| 2016 | 395.89 |
| 2017 | 423.66 |
| 2018 | 448.32 |

In 2018, total operating revenues for Canadian mainline railway companies, including CN, CP and VIA Rail, were \$15.6 billion, a 9.8% increase from the previous year. This amount also represents an increase of 15.5% between 2014 and 2018. In 2018, total rail operating expenses increased 16.5% to \$10.2 billion, increasing 2.8% since 2014.

Figure 7: Operating revenues and expenses, mainline railway companies



Source: Statistics Canada. Table 23-10-0045-01 Railway industry operating and income accounts, by mainline companies (Accessed March 2, 2021)

Table 13: Operating revenues and expenses, mainline railway companies

| Year | Total operating revenues (\$ billion) | Total operating expenses (\$ billion) |
|------|---------------------------------------|---------------------------------------|
| 2014 | 13.530 | 9.911 |
| 2015 | 13.658 | 9.356 |
| 2016 | 13.169 | 8.183 |
| 2017 | 14.228 | 8.747 |
| 2018 | 15.625 | 10.186 |

Shippers of many commodities rely on rail to move their products to market. Shipments of potash increased by 13.5% between 2017 and 2018 and have increased by 30.4% between 2014 and 2018. Shipments of petroleum goods increased by 45.8% in 2018 and decreased by 7.1% between 2013 and 2018. Wheat shipments increased by 6.2% between 2017 and 2018 and decreased by 9.6% between 2013 and 2018.

Developments in the rail sector

Early in the year, blockades and landslides continued to impact rail traffic, along with challenges posed by the onset of COVID-19. The rail sector experienced significant recovery as internal and external demands on the Canadian economy evolved. While volume reductions occurred in some areas, such as petroleum, minerals and metals, these reductions were substantially offset by increased shipments of grain, other agricultural products, and intermodal units.

This year has seen record-setting grain movement for both CN and CP. As of March 2021, CP moved 16 million metric tonnes (MMT) of Canadian grain and grain products in the 2020–2021 crop year (August 1 – July 31) so far, up by more than 13% compared to this time last year. Similarly, CN set a record with 17.5 MMT moved so far this crop year, exceeding the previous record volume by 2.6 MMT.

Both CN and CP exceeded their [Maximum Grain Revenue Entitlements](#) (MRE). Per the *Canadian Transportation Act*, the funds in excess of the MRE plus a 5% penalty are paid to the Western Grains Research Foundation (WGRF) every crop year MRE is exceeded. CN will pay \$3.3 million, whereas CP will pay \$2.3 million to the WGRF.

Mergers and acquisitions

Canada Pacific Railway (CP) acquisition of Detroit River Tunnel (DRT)

On December 22, 2020, CP completed its purchase of the DRT for approximately \$312 million USD. CP previously owned a 16.5% stake in the tunnel in partnership with the Ontario Municipal Employees Retirement System (OMERS, the pension plan for municipal employees in Ontario). CP purchased the remaining 83.5%. The DRT represents a key link in CP's route connecting Chicago with Toronto, Montreal, and Eastern Canada.

CP acquisition of Central Maine & Quebec Railway

On June 3, 2020, CP finalized its acquisition of Central Maine and Quebec Railway US Inc. (CMQR US). The acquisition was approved by the U.S. Surface Transportation Board on May 4, 2020, and took effect on June 3, 2020. The acquisition is not subject to approval under Canadian legislation. However, on March 8, 2021, per s.93 of the [Canada Transportation Act](#), the CTA varied CP's certificate of fitness (CoF) to add CMQR. Alongside CP's previous acquisition of Central Maine & Quebec Railway Canada Inc. (CMQR Canada), this completes CP's purchase of the entire CMQR network. CMQR will continue to operate in the United States and Canada as subsidiaries of CP.

This acquisition has created a 13,000-mile rail network connecting the Atlantic coast to the Pacific coast. It passes through six Canadian provinces and eleven U.S. states, integrating Maine and Vermont rail lines into CP's network.

Marine sector

The marine sector plays an important role in linking Canada to its trading partners around the world. The major ports in Canada are well-integrated with the rail network. This integration allows shippers thousands of kilometres away from a major port to access foreign markets.

Canada's marine sector experienced significant challenges in 2020, including an extended peak season across Canada's supply chain. These challenges went well beyond November, when peak season volumes normally subside. Eastbound trans-Pacific vessels were thrown off schedule due to container shortages. Vessel departures from Asia were delayed by severe weather in Busan, South Korea. The deployment of extra-loader vessels on an ad hoc basis in the trans-Pacific contributed to increased cargo volumes. All these factors contributed to interruptions in the supply chain.

A cargo surge that began in October of 2020 and continued into 2021 caused significant congestion at Canada's ports. The surge, driven by imports from Asia, came after cargo plummeted in the first half of 2020 because of the pandemic. Exports did not keep pace with the inbound cargo. Empty containers heading back to Asia further contributed to the container shortages.

Additional disruptions occurred due to a strike at the Port of Montreal in August 2020, including container backlogs and increased port dwell times.

Eighteen Canadian Port Authorities handled 342.1 million tonnes of cargo in 2018, increasing by 2.1% over 2017. Vancouver Fraser Port Authority handled nearly 43% of the total tonnes dealt with by Canadian Port Authorities.

Interprovincial/international bus sector

The CTA's mandate in accessible transportation extends to Canada's bus operations that cross national or provincial borders. In 2020 this sector reported significant impacts from the COVID-19 pandemic. These impacts follow decreased ridership and increased operating costs experienced in recent years.

On May 13, 2020, Greyhound temporarily suspended all operations. Greyhound indicated this would result in the layoff of approximately 400 employees. To date, the suspension has not been lifted. Smaller regional operators report they are struggling to remain viable. Operators face challenges that include health requirements for physical distancing, localized stay-at-home orders, and decreased passenger travel.

Assessment of the Act



The CTA is required to report on the operation of the [Canada Transportation Act](#) (the Act)—and any difficulties observed in its administration — through its Annual Report. This year, the CTA has identified three broad areas where improvements are needed.

First, we have identified targeted changes to the Act that would support the CTA in delivering each of its three core mandates.

Second, we have identified changes related to recourse processes and administrative matters that cut across our mandates and that will help us deliver our services more efficiently, effectively and nimbly.

Third, we have identified changes to our compliance toolkit that will help us make sure transportation service providers are complying with requirements—all the more important now that the CTA has updated its full suite of regulations through its [Regulatory Modernization Initiative](#).

Improvements targeted to specific mandates

The following targeted changes will enable the CTA to better discharge responsibilities under its three core mandates.

Air passenger protection

The CTA is able to intervene on its own motion if a concern arises regarding the reasonableness or clarity of an international air tariff. This allows the CTA to proactively address situations where, for example, a tariff has provisions that may be unfair or undermine the spirit and intent of passenger rights. However, we are unable to intervene

in the same way for cases involving domestic travel. The CTA must first wait for a complaint to be received before looking into possible issues, even if those issues are widely reported in the media, for example. **An amendment should be made to allow the CTA to look into possible issues with domestic tariffs on its own motion, consistent with the authority it has for international tariffs.**

In addition, the Act does not require the parties to keep confidential the discussions that took place during the facilitation, including the detail of any settlement. This is in contrast to the rules for mediation and means that parties may sometimes be reluctant to participate in facilitation—which undermines efforts to resolve disputes as quickly and informally as possible. **The Act should be amended so that passengers and airlines can participate in facilitation without any concern that their information and positions will be shared with others.**

Accessible transportation

The [Accessible Canada Act](#) amended the Act to provide the CTA with the authority to investigate systemic issues on its own motion, with the approval of the Minister of Transport. This is an important tool that can be used to examine reasons for what appear to be recurring or broad-based barriers to travel by persons with disabilities and identify ways to remove these barriers. However, the CTA is unable to order remedies or issue orders to address problems found through such an investigation. This stands in contrast to the authority the CTA has for own motion inquiries into possible air passenger and rail service issues. **The Act should be amended to provide the CTA with remedial powers in this area, to make sure the finding of an investigation can be relied on for the purposes of eliminating barriers to the mobility of persons of disabilities.**

In addition, the CTA and Canadians generally lack data on trends and issues in accessible transportation. An amendment to the *Canada Transportation Act* to require transportation service providers to report on key metrics – such as the number and type of requests for accessible services – would provide more insight into what is happening on the ground and how well the rights of persons with disabilities are being protected.

National transportation network

Multiple shippers have indicated to the CTA that they are pressured to waive their rights to access remedies otherwise available under the legislation as a condition for entering into contracts with railway companies. Others have noted concerns about potential retaliation they might face from railways if they advance a complaint. If true, this practice

undermines the legislative intent of including shipper remedies in the Act, particularly given the fact that there is often an asymmetry in bargaining power between railway companies and the shippers that depend on their services. **Amendments to the Act will prohibit such contractual provisions, and any retaliatory actions against shippers that submit applications to the CTA.**

Cross-cutting improvements

We have identified a number of changes related to recourse and administrative matters that cut across our mandates. Some will update provisions that hamper processes unnecessarily or are inconsistent with our independence as a quasi-judicial tribunal and regulator. Others are needed to remove operational red tape and enhance our efficiency.

Own-motion investigations

The CTA may, on its own initiative, investigate rail level of service matters and inquire into matters that concern transportation and relate to the mobility of persons with disabilities. However, the CTA must first obtain the Minister's approval. The CTA must seek the approval of the Minister of Transport before launching a proceeding on its own initiative—in contrast to other agencies that can act without first requesting such approval. This restriction does not seem consistent with the CTA's decision-making independence. **The CTA recommends that the restriction be removed.**

Standard of review in appeals of decisions

In its 2019 decision in *Vavilov*, the Supreme Court of Canada ruled that in the absence of specific legislation or legislative intent that states otherwise, the standard of review in appeals of the decisions of tribunals like the CTA, whose enabling legislation includes a statutory right of appeal, is correctness and not reasonableness. The resulting increased basis for reviewing decisions could undermine our expertise in transportation matters and create potential instability for stakeholders. **In line with that decision, the Act should be amended to specifically state that the intended standard of review for CTA decisions is reasonableness.**

Right to participate in an appeal of CTA decisions

The CTA's participation in appeals of its decisions to the Federal Court of Appeal (FCA) has been questioned in recent proceedings, notwithstanding the fact that subsection

41(4) of the Act provides the CTA with the right to be heard on the argument of an appeal. **The Act should be amended to clarify the right of the CTA 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 FCA is as complete as possible.

Authority to act on behalf of the Crown – Duty to consult Indigenous people

The Act should be amended to clarify that the Crown relies on the CTA's processes in discharging its duty to consult with Indigenous people where a CTA authorization triggers that duty. This would reflect Supreme Court of Canada jurisprudence in *Chippewas of the Thames First Nation v Enbridge Pipelines*, and *Clyde River (Hamlet) v Petroleum Geo-Services Inc.* and provide greater clarity and efficiency in the event that the Crown's duty to consult is triggered in a proceeding, such as those relating to railway line construction or relocation.

Temporary Members

Current legislative provisions also introduce extra steps and potential delays when the CTA's Chair—who assigns panels of Members to hear cases—wants to draw on the expertise of a particular individual on the roster of those individuals eligible to be appointed as Temporary Members for a specific case or category of cases. All those individuals are appointed to the roster by the Governor in Council on the recommendation of the Minister of Transport. The same provisions limit the ability of the Chair to expand or decrease the number of Temporary Members based on file volumes. **The CTA would be able to respond with greater efficiency if the Chair were authorized to draw Temporary Members directly from the roster, rather than being required to ask the Minister of Transport to appoint them; the three-person cap on the number of Temporary Members was removed or raised; and Temporary Members were permitted to serve more than two consecutive one-year terms.**

Ability to delegate routine matters to employees

Unlike many other tribunals and regulators, the CTA does not have the legal authority to delegate routine matters, with minimal scope for discretion, to staff. This includes routine regulatory matters such as the issuance of uncontroversial air licences, charter permits, uncontested coasting trade applications and wet-lease applications that involve a straightforward review of standard documentation by CTA staff to assess whether

the application meets legislative and regulatory requirements. As a result, the CTA's Members must spend time on these matters—time that could be better invested in dealing with more significant and complex dispute adjudications and regulatory determinations. **In a period of rising case numbers, receiving delegation authority is of increased importance.**

Updating the CTA's compliance assurance toolkit

The legislated compliance assurance framework for the CTA does not sufficiently reflect that we have a dual role as a regulator and as a tribunal. For example, even if CTA Members find, in adjudicating a complaint, that an airline violated the [Air Passenger Protection Regulations](#), an administrative monetary penalty (AMP) cannot follow more or less automatically on the basis of this conclusion. Instead, a Designated Enforcement Officer needs to undertake a separate examination to support enforcement action, which is not an efficient use of public funds, negatively affects passenger protection, and is unnecessarily process-heavy for the airline involved. **This Act should provide that enforcement officers may rely on the CTA's adjudicative findings when determining whether to levy an AMP.**

Other, more basic changes are needed in the area of compliance. For example, AMPs are a tool commonly used by regulators to efficiently enforce legal requirements and create incentives for compliance. The current 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, this amount should be increased—from \$25,000 for corporations and \$5,000 for individuals—to \$250,000.**

As another example, the CTA lacks the power to address a violation that continues day after day. An amendment should be made to the Act to allow Designated Enforcement Officers to issue more than a single Notice of Violation for continuing offences (e.g., when there is a failure to have proper signage and is not remedied by a carrier after a Notice of Violation has been issued). This will act as a deterrent to ongoing non-compliance and ensure service providers are solving issues without delay.

Appendix: Reporting on dispute resolution and compliance activities



Air travel complaints

For other air travel complaint statistics, see our [2020–2021 Statistics](#).

Table 14: Names of carriers against whom complaints are made

| Carrier | Nationality | Total |
|--|-------------|-------|
| 9736140 Canada Inc. | Canada | 1 |
| ABC Aerolineas, S.A. DE C.V. | Mexico | 54 |
| Aegean Airlines S.A. | Greece | 1 |
| Aer Lingus Limited | Ireland | 6 |
| Aeroflot - Russian Airlines | Russia | 1 |
| Aerolineas Argentinas Sociedad Anonima | Argentina | 1 |
| Aerovias de Mexico S.A. de C.V. | Mexico | 30 |
| Aerovias del Continente Americano S.A. | Colombia | 2 |
| Air Canada | Canada | 3,481 |
| Air China Limited | China | 47 |
| Air Creebec Inc. | Canada | 2 |
| Air India Limited | India | 53 |
| Air Italy S.p.A. | Italy | 3 |
| Air Liaison | Canada | 2 |
| Air New Zealand Limited | New Zealand | 6 |
| Air North Charter & Training Ltd. | Canada | 1 |

| Carrier | Nationality | Total |
|--|--------------------------|--------------|
| Air Serbia | Serbia-Montenegro | 1 |
| Air Transat A.T. Inc. | Canada | 448 |
| Alaska Airlines, Inc. | United States of America | 15 |
| ALIA - The Royal Jordanian Airline plc (Royal Jordanian) | Jordan | 6 |
| Alitalia - Società Aerea Italiana S.p.A. | Italy | 9 |
| All Nippon Airways Co., Ltd. | Japan | 4 |
| American Airlines, Inc. | United States of America | 98 |
| Asiana Airlines, Inc. | South Korea | 2 |
| Austrian Airlines AG | Austria | 7 |
| Bearskin Lake Air Service LP, représentée par son commandité/as represented by its general partner, Bearskin GP Inc. | Canada | 2 |
| Bradley Air Services Limited | Canada | 2 |
| British Airways Plc | United Kingdom | 24 |
| Brussels Airlines NV/SA | Belgium | 12 |
| Calm Air International LP, représentée par son commandité/as represented by its general partner, Calm Air GP Inc. | Canada | 3 |
| Canadian North Inc. | Canada | 8 |
| Caribbean Airlines Limited | Trinidad and Tobago | 4 |
| Cascadia Airways Inc. | Canada | 2 |
| Cathay Pacific Airways Limited | Hong Kong | 29 |
| China Airlines Limited | Taiwan | 7 |
| China Eastern Airlines Corporation Limited | China | 21 |
| China Southern Airlines Company Limited | China | 15 |
| Compagnie Nationale Royal Air Maroc | Morocco | 72 |
| Compañía Panameña de Aviación, S.A. | Panama | 20 |

| Carrier | Nationality | Total |
|--|--------------------------|--------------|
| Condor Flugdienst GmbH | Germany | 2 |
| Corsair | France | 2 |
| CSA Air, Inc. | United States of America | 1 |
| Delta Air Lines, Inc. | United States of America | 66 |
| Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines) | Germany | 65 |
| EgyptAir | Egypt | 18 |
| El Al Israel Airlines Ltd. | Israel | 2 |
| Emirates | United Arab Emirates | 17 |
| EPE SPA Air Algérie | Algeria | 25 |
| Ethiopian Airlines Enterprise | Ethiopia | 3 |
| Etihad Airways P.J.S.C. | United Arab Emirates | 16 |
| Eva Airways Corporation | Taiwan | 3 |
| Finnair OYJ | Finland | 2 |
| Flair Airlines Ltd. | Canada | 129 |
| Fly Jamaica Airways Limited | Jamaica | 1 |
| Frontier Airlines | United States of America | 1 |
| Gulf Air B.S.C. (c) | Bahrain | 1 |
| Hainan Airlines Company Limited | China | 1 |
| Hong Kong Airlines Limited | Hong Kong | 9 |
| Icelandair ehf | Iceland | 15 |
| Jet Airways (India) Limited | India | 2 |
| K.D. Air Corporation | Canada | 1 |
| Koninklijke Luchtvaart Maatschappij, N.V. (K.L.M. Royal Dutch Airlines) | Netherlands | 36 |
| Korean Air Lines Co. Ltd. | South Korea | 6 |
| Kuwait Airways | Kuwait | 2 |

| Carrier | Nationality | Total |
|--|--------------------|--------------|
| LATAM Airlines Group S.A. | Chile | 13 |
| Malaysian Airline System Berhad | Malaysia | 1 |
| Middle East Airlines Airliban S.A.L. | Lebanon | 1 |
| Nihon Koku Kabushiki Gaisha (Japan Airlines Co., Ltd.) | Japan | 6 |
| Oman Air | Oman | 9 |
| OpenSkies | France | 10 |
| Pacific Coastal Airlines Limited | Canada | 8 |
| Pakistan International Airlines Corporation | Pakistan | 18 |
| PAL Airlines Ltd. | Canada | 5 |
| Perimeter Aviation | Canada | 2 |
| Philippine Airlines, Inc. | Philippines | 27 |
| Polskie Linie Lotnicze LOT SA (LOT Polish Airlines SA) | Poland | 22 |
| Porter Airlines Inc. | Canada | 50 |
| Qantas Airways Limited | Australia | 5 |
| Qatar Airways (Q.C.S.C.) | Qatar | 37 |
| Sata Internacional - Serviços e Transportes Aéreos, S.A. | Portugal | 18 |
| Saudi Arabian Airlines Corporation | Saudi Arabia | 2 |
| Sichuan Airlines Co., Ltd. | China | 1 |
| Société Air France | France | 46 |
| Société Tunisienne de l'Air | Tunisia | 19 |
| South African Airways SOC Limited | South Africa | 1 |
| SriLankan Airlines Limited | Sri Lanka | 1 |
| Sunwing Airlines Inc. | Canada | 768 |
| Swiss International Air Lines Ltd. | Switzerland | 11 |
| Swoop Inc. | Canada | 342 |
| Taca International Airlines, S.A. | El Salvador | 2 |

| Carrier | Nationality | Total |
|--|--------------------------|-------------|
| Transportes Aéreos Portugueses, S.A. | Portugal | 28 |
| Türk Hava Yollari Anonim Ortakligi (Turkish Airlines Inc.) | Turkey | 49 |
| Ukraine international Airlines | Ukraine | 10 |
| United Airlines, Inc. | United States of America | 163 |
| Wasaya Airways Limited Partnership, by its General Partner Wasaya General Partner Limited | Canada | 2 |
| WestJet | Canada | 1,101 |
| Wow air ehf. | Iceland | 1 |
| Xiamen Airlines Co., Ltd. | China | 2 |
| TOTAL | | 7709 |

Applications before the CTA and the findings on them

Table 15: Total rulings by Members

| | 2020-2021 | 2019-2020 | 2018-2019 | 2017-2018 | 2016-2017 |
|------------------------|-----------|-----------|-----------|-----------|-----------|
| Orders | 295 | 182 | 230 | 236 | 212 |
| Decisions | 104 | 98 | 57 | 69 | 353 |
| Determinations | 216 | 238 | 266 | 260 | 14 |
| Permits | 396 | 657 | 503 | 387 | 353 |
| Final letter decisions | 15 | 12 | 20 | 13 | 14 |
| Interim decisions | 92 | 105 | 114 | 91 | 58 |
| Total | 1118 | 1292 | 1190 | 1056 | 1004 |

Table 16: Disputes resolved by facilitation

| | 2020-2021 | 2019-2020 | 2018-2019 | 2017-2018 | 2016-2017 |
|------------|-----------|-----------|-----------|-----------|-----------|
| Accessible | 105 | 95 | 72 | 78 | 53 |
| Air | 7444 | 7630 | 4461 | 3614 | 2126 |
| Marine | 0 | 0 | 0 | 0 | 0 |
| Rail | 33 | 18 | 15 | 16 | 14 |
| Total | 7582 | 7743 | 4548 | 3708 | 2193 |

Table 17: Disputes resolved by mediation

| | 2020-2021 | 2019-2020 | 2018-2019 | 2017-2018 | 2016-2017 |
|------------|-----------|-----------|-----------|-----------|-----------|
| Accessible | 54 | 33 | 14 | 7 | 10 |
| Air | 184 | 113 | 160 | 123 | 55 |
| Marine | 1 | 1 | 0 | 0 | 0 |
| Rail | 20 | 41 | 7 | 8 | 7 |
| Total | 259 | 188 | 181 | 138 | 72 |

Table 18: Disputes resolved by adjudication

| | 2020-2021 | 2019-2020 | 2018-2019 | 2017-2018 | 2016-2017 |
|------------|-----------|-----------|-----------|-----------|-----------|
| Accessible | 15 | 26 | 12 | 13 | 6 |
| Air | 81 | 88 | 47 | 54 | 14 |
| Marine | 4 | 4 | 8 | 22 | 6 |
| Rail | 5 | 10 | 9 | 5 | 8 |
| Total | 105 | 128 | 76 | 94 | 34 |

Table 19: Disputes resolved by arbitration

| | 2020-2021 | 2019-2020 | 2018-2019 | 2017-2018 | 2016-2017 |
|------------|-----------|-----------|-----------|-----------|-----------|
| Accessible | 0 | 0 | 0 | 0 | 0 |
| Air | 0 | 0 | 0 | 0 | 0 |
| Marine | 0 | 0 | 0 | 0 | 0 |
| Rail | 3 | 2 | 5 | 1 | 2 |
| Total | 3 | 2 | 5 | 1 | 2 |

For further performance information, see our [2020–2021 Statistics](#).

Accessible Canada Act enforcement

Table 20: Reporting to Parliament (amendments to subsection 42(2) of the *Canada Transportation Act*) requirements on CTA's annual reporting

| | 2020-2021 |
|--|-----------|
| # of inspections conducted to verify compliance and non-compliance | 1 |
| # of orders made under section 181.2 | 0 |
| # of orders, in writing, made under section 26, 60 to 62 | 0 |
| # of notices of violation issued under section 180 | 3 |
| # of inquiries made under any of sections 172, 172.1 and 172.3 | 11 |

Compliance monitoring and enforcement activities

The CTA monitored compliance by Canadian and foreign airlines with the [Air Passenger Protection Regulations](#). We issued 33 cautionary notices for potential non-compliance with APPR communication provisions. All cautionary notices were addressed by the airlines.

The APPR also includes air price advertising requirements. These allow consumers to easily determine the total price of advertised air services. We monitored the advertised air prices of 22 foreign air carriers. We issued 49 cautionary notices and two notices of violation with penalties totalling \$54,500.

Our enforcement officers investigated air carriers suspected of operating without a licence or necessary charter permits. These investigations resulted in the issuing of four notices of violation with penalties totalling \$26,500.

We verified compliance with 44 CTA orders. These included:

- ensuring passengers were provided compensation and reimbursements;
- confirming air carriers amended their tariff as ordered;
- verifying that regulated entities communicated with their employees about existing and new policies on accessibility that affect air and rail passengers;
- confirming regulated entity policies respecting the removal of barriers for persons with disabilities were developed or amended; and,
- receiving and analyzing reports as ordered that outline a regulated entity's continuing compliance efforts.

For other enforcement and compliances statistics, see our [2020–2021 Statistics](#).

Accessibility

New [Accessible Transportation for Persons with Disabilities Regulations](#) came into force on June 25, 2020. We moved quickly to:

- verify compliance by regulated entities;
- monitor the websites of regulated entities;
- conduct targeted outreach to regulated entities to ensure compliance with the new communications requirements.

We issued four notices of violations with penalties totalling \$28,000 for non-compliances with the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.

We have an expanded mandate to monitor and enforce new accessibility regulations. Our enforcement officers have strengthened their knowledge of our human rights mandate. The Rick Hansen Foundation has trained staff on technical aspects of standards for the built environment. The training has provided officers with additional tools and knowledge to promote, assess and enforce the ATPDR.

Endnote



¹ Note: Select data in this section from Transport Canada and Statistics Canada could not be updated as they were not available at the time this Annual Report was written.