

TRANSPORTATION APPEAL TRIBUNAL  
OF CANADA



TRIBUNAL D'APPEL DES TRANSPORTS  
DU CANADA

# Northern Air Transport Association AGM

Whitehorse, YT  
April 18, 2012



[www.tatc.gc.ca](http://www.tatc.gc.ca)



## What is the Tribunal?

- » The TATC is a quasi-judicial body established pursuant to the *Transportation Appeal Tribunal of Canada Act*.
- » The Tribunal conducts reviews and appeals in the aviation, marine and railway sectors. The Tribunal's jurisdiction also includes international bridges and tunnels.
- » The Tribunal has a commitment to openness and cooperation and is mandated to conduct informal, expeditious and fair hearings.



## Transportation Appeal Tribunal of Canada

- » The Tribunal, formerly the **Civil Aviation Tribunal**, was created in 1986.
- » The Tribunal provides an independent review of administrative and enforcement actions taken in the transportation sector.
- » Such actions may be taken by the Minister of Transport, railway safety inspectors and/or the Canadian Transportation Agency (“CTA”) under various federal transportation acts, including the: *Aeronautics Act* and related regulations, *Canada Marine Act*, the *Canada Shipping Act, 2001*, *Canada Transportation Act*, *International Bridges and Tunnels Act*, *Marine Transportation Security Act* and related regulations, and the *Railway Safety Act*.



## Role of the Tribunal

- » Essentially, it is the TATC's mandate to **ensure that the charges laid by Transport Canada are supported by evidence**, and that the individuals charged have the opportunity to have their cases heard in a **fair and impartial setting**.



## TATC Staffing

- » The Tribunal's Chairperson is also its Chief Executive Officer (CEO).
- » The Chairperson and CEO is responsible for directing and supervising the work necessary to facilitate the functioning of the Tribunal.
- » The Chairperson, Vice-Chairperson and immediate staff account for approximately twelve full-time equivalents.



## Tribunal Members – Decision Makers

- » Members of the Tribunal conduct Tribunal hearings and make decisions on cases before them.
- » All Members work part-time for the Tribunal and are drawn from across Canada.
- » Members are appointed by Governor in Council on the basis of their knowledge and expertise.
- » Appointments are generally made for three years. Members may be re-appointed.
- » The Chair and CEO is responsible for assigning Members to conduct and hear the cases before the Tribunal.
- » Presently there are 27 part-time Members at the Tribunal.
- » We are actively recruiting for new Members.



## Hearings at the TATC

There are two levels of hearings at the TATC:

1. **REVIEW HEARING** - The first level of hearing is conducted by one Tribunal Member. This hearing reviews the Minister's decision.
2. **APPEAL HEARING** - The second level of hearing is heard by a designated Chairperson and two other Tribunal Members. This hearing reviews the determination rendered by the Tribunal Member at the Review Hearing.

**NOTE – The Member who has conducted the Review Hearing is not involved in the Appeal Hearing.**



## Principles of the TATC

- » The basic principles governing the Tribunal are independence and expertise.
- » The Tribunal's comprehensive and competent execution of its mandate determines its success in addressing the needs of Canada's maritime community.
- » The Tribunal offers services in both official languages.
- » The TATC is also itinerant – Review and Appeal Hearings take place throughout Canada at the convenience of the parties involved to the greatest extent possible.





## Workings of the TATC

- » The Tribunal's Registry operates geographically, and is divided between **East** and **West**.
- » The Tribunal's two Registrars are responsible for coordinating and managing files throughout the entire process.
- » Both Transport Canada and the person or body affected by the Minister's decision **can retain legal counsel** to represent them at a Review Hearing, but often individuals before the Tribunal are **self-represented**.



## TATC Hearing Locations

- » For **enforcement matters**, the Review Hearing will normally be located where the alleged infraction occurred, or the nearest practical alternative.

**\*This reduces the cost for witnesses to attend the Review Hearing**

- » For **medical cases**, Review Hearings are held at the location which is nearest to the residence of the person affected by the decision and is reachable by commercial transportation.



## What We Do

- » TATC's purpose is to provide the transportation communities with the opportunity to have the Minister of Transport and the CTA's enforcement and licensing decisions reviewed by an independent and quasi-judicial body.
- » Enforcement and licensing decisions reviewed by the TATC include: the issuance of orders, the imposition of monetary penalties, or the suspension, cancellation, refusal to renew, or the refusal to issue or amend documents of entitlement.



## Key Statutes of the TATC

- » *Transportation Appeal Tribunal of Canada Act* & related Rules
- » *Aeronautics Act*
- » *Canadian Aviation Regulations* (CARs)
- » *Canada Transportation Act*
- » *Canada Shipping Act, 2001*
- » *Marine Transportation Security Act*
- » *Railway Safety Act*



## TATC: Legislation and Rules

The Tribunal operates under the *Transportation Appeal Tribunal of Canada Act*. Key sections of the Act include:

15(1) – The Tribunal is not bound by any legal or technical rules of evidence

15(4) – allows for hearings to be held in private if it is in the public interest to do so or if medical or confidential business information may be disclosed

**Under s. 15, each Member has all the powers of a Commissioner under Part 1 of the *Inquiries Act*.**

**Under s. 18, the Tribunal has developed the *Transportation Appeal Tribunal of Canada Rules* which address various procedural matters.**



## TATC: Legislation and Rules

- » The TATC's powers are wide in scope. Decisions reviewed by the TATC include:

### ***Aeronautics Act***

6.71 – refusal to issue or amend a Canadian aviation document (CAD) on prescribed grounds; the Tribunal may confirm the Minister's decision or refer the matter back for reconsideration

6.9 – CAD suspension or cancellation; the Tribunal may confirm the Minister's decision, dismiss the allegation or increase or decrease the suspension

7 – CAD suspension; pursuant to 7(7)(a) the Tribunal may confirm the Minister's decision or refer the matter back for reconsideration; or it may substitute its own determination under 7(7)(b)



## The Scope of the TATC's Jurisdiction *cont'd*

### ***Aeronautics Act (cont'd)***

7.1 – CAD suspension, cancellation or refusal to renew on other grounds – including public safety; the Tribunal may confirm the Minister's decision or refer the matter back for reconsideration

7.7 – Notice of assessment of a monetary penalty; The Tribunal may confirm the Minister's decision, dismiss the allegation or increase or decrease the penalty

8.3 – Refusal to remove after two years a notation of a suspension or a penalty from a record kept by the Minister; the Tribunal may conform the Minister's decision or refer the matter back to the Minister for reconsideration



## The Scope of the TATC's Jurisdiction *cont'd*

- » The TATC's powers are wide in scope. Decisions reviewed by the TATC include:

### ***Canada Transportation Act***

180.1 – a person who is been served a notice of violation – a monetary penalty – must either pay the amount or file for a review of the facts or the amount by the Tribunal

180.5 – after a review, the Tribunal may determine that the person has not contravened the provision; or that the person has contravened the designated provision and review the amount required to be paid by the person

180.6 – the Tribunal's determination may be appealed by the Minister or the person to the Appeal Panel of the Tribunal





## The Scope of the TATC's Jurisdiction *cont'd*

- » Part II of the ***Canada Transportation Act*** deals with Air Transportation
  
- » Prohibitions and requirements established under this Part include :
  - 57 – No person shall operate an air service unless, in respect of that service, the person:
    - (a) holds a licence issued under this Part;
    - (b) holds a Canadian aviation document; and
    - (c) has the prescribed liability insurance coverage.
  
- » This section was recently considered in two Tribunal decisions...



## Cases heard at the TATC

### ***Marina District Development Company v. Canadian Transportation Agency***

2010 TATCE 14, Review

- » **Facts:** The Canadian Transportation Agency (“CTA”) issued a Notice of violation to the Applicant, Marina District Development Company, d.b.a. Borgata Hotel Casino & Spa operating in Atlantic City.
- » The alleged violations stemmed from 10 flights when an aircraft owned and operated by the Applicant completed trips between Atlantic City and either Montreal or Toronto. All of these flights were to transport Canadian customers between a Canadian destination and the Borgata Hotel Casino & Spa.
- » A monetary penalty of \$25 000 CAD was imposed for an alleged contravention of paragraph 57(a) of the *Canada Transportation Act* pursuant to section 180 of the *Act*.



## Cases heard at the TATC cont'd

### **Marina District Development Company - Review Hearing**

- » **Issue:** What is a "publicly available" air service within the meaning of air service as defined in section 56 of the *Act*?
- » **Determination:** The Applicant was not operating an air service within the meaning of section 56 and section 57 of the *Act* does not apply.
- » **Reasons:** The Tribunal determined that the applicable test was whether “[a]ny member of the public who is interested in obtaining the service can, of his own initiative, contact the service provider to enquire about the availability of flights and reasonably expect to be able to book a flight. Should the conditions be to his satisfaction including price and schedule and they meet certain conditions, if any exist, the service provider is offering an air service that is publicly available. If any member of the public cannot do so, the service is not publicly available and section 57 of the *Act* does not apply.”



## *Cases heard at the TATC cont'd*

### ***Marina District Development Company - Review Hearing***

#### **Reasons:**

- » Borgata does not publicize or promote the free flights, and Members of the public cannot contact the Applicant to enquire about the availability of flights and reasonably expect to be able to book a flight.
- » The availability of flights is at the Applicant's complete discretion. As such, there can be no reasonable expectation from any member of the public, or even from one of the customers, that they can call and arrange for a flight.
- » The Tribunal concludes that members of the public cannot initiate contact to enquire about the availability of flights and reasonably expect to be able to book a flight. Accordingly, the test is not met and the Applicant was not offering an air service that was publicly available for the transportation of passengers and thus, is not in contravention of section 57 of the *Act*.



## *Cases heard at the TATC cont'd*

### ***Marina District Development Company - Appeal Hearing***

- » **Appeal:** The Review Tribunal's determination was appealed by the CTA and was considered by an Appeal Panel of 3 Tribunal Members.
  
- » **Reasons:** Although the Appeal Panel found that the Tribunal had jurisdiction to determine the meaning of the term "publicly available", it had exceeded its jurisdiction by creating a test that was inconsistent with the principles of statutory interpretation and the intent and purpose of the CTA. Nonetheless, even if it applied the faulty test to the facts at hand, the Appeal Panel would find Borgata was operating a "publicly available" service.
  
- » **Held:** The Appeal was allowed, the Appeal Panel upheld the CTA's decision that the Respondent violated paragraph 57(1) of the Canadian Transportation Act, but reduced the penalty from \$25 000 CAD to \$12 500 CAD.



## *Cases heard at the TATC cont'd*

### ***Marina District Development Company - Federal Court***

#### **» Judicial Review: Stay Tuned!**

Borgata has applied for judicial review of the Appeal Tribunal's decision to the Federal Court. As of yet, no date has been set for the Federal Court to hear the judicial review.



# Work Done by the Tribunal in 2010-2011

Fiscal Year 2010–2011

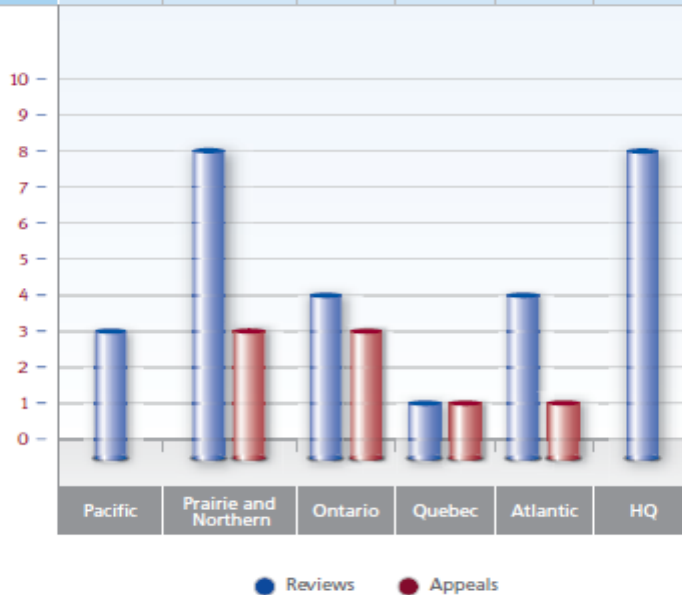
| TOTAL CASES BY CATEGORY              |         |                      |         |        |          |    |        |     |
|--------------------------------------|---------|----------------------|---------|--------|----------|----|--------|-----|
| Category                             | Pacific | Prairie and Northern | Ontario | Quebec | Atlantic | HQ | TOTALS | %   |
| <b>MEDICALS</b>                      |         |                      |         |        |          |    |        |     |
| Aviation                             | 12      | 13                   | 25      | 21     | 5        | 3  | 98     | 33  |
| Marine                               | 0       | 0                    | 0       | 0      | 0        | 19 |        |     |
| <b>SUSPENSIONS</b>                   |         |                      |         |        |          |    |        |     |
| Aviation                             | 5       | 26                   | 5       | 7      | 0        | 6  | 49     | 17  |
| <b>FINES</b>                         |         |                      |         |        |          |    |        |     |
| Aviation                             | 7       | 35                   | 8       | 8      | 1        | 3  | 120    | 41  |
| Marine                               | 16      | 2                    | 7       | 14     | 13       | 0  |        |     |
| Canadian Transportation Agency       | 0       | 0                    | 0       | 0      | 0        | 6  |        |     |
| <b>CANCELLATIONS</b>                 |         |                      |         |        |          |    |        |     |
| Aviation                             | 0       | 2                    | 1       | 2      | 0        | 0  | 6      | 2   |
| Marine                               | 0       | 0                    | 0       | 1      | 0        | 0  |        |     |
| <b>REFUSALS TO ISSUE</b>             |         |                      |         |        |          |    |        |     |
| Aviation                             | 1       | 4                    | 1       | 3      | 0        | 1  | 18     | 6   |
| Marine                               | 0       | 0                    | 0       | 0      | 1        | 7  |        |     |
| <b>REFUSALS TO REMOVE A NOTATION</b> |         |                      |         |        |          |    |        |     |
| Aviation                             | 0       | 0                    | 0       | 0      | 0        | 1  | 1      | .5  |
| <b>RAIL ORDERS</b>                   |         |                      |         |        |          |    |        |     |
| Rail                                 | 0       | 1                    | 0       | 0      | 0        | 0  | 1      | .5  |
| <b>TOTALS</b>                        |         |                      |         |        |          |    |        |     |
|                                      | 41      | 83                   | 47      | 56     | 20       | 46 | 293    | –   |
| %                                    | 14      | 28                   | 16      | 19     | 7        | 16 | –      | 100 |



## Work Done by the Tribunal in 2010-2011 *cont'd*

Fiscal Year 2010–2011

| REVIEWS AND APPEALS CONCLUDED WITH A HEARING |          |                      |           |          |           |           |           |            |
|--|----------|----------------------|-----------|----------|-----------|-----------|-----------|------------|
| Hearing Level                                | Pacific  | Prairie and Northern | Ontario   | Quebec   | Atlantic  | HQ        | TOTALS    | %          |
| <b>REVIEWS</b>                               |          |                      |           |          |           |           |           |            |
| Aviation                                     | 3        | 8                    | 3         | 1        | 0         | 3         | 28        | 78         |
| Marine                                       | 0        | 0                    | 1         | 0        | 4         | 5         |           |            |
| <b>APPEALS</b>                               |          |                      |           |          |           |           |           |            |
| Aviation                                     | 0        | 3                    | 2         | 1        | 1         | 0         | 8         | 22         |
| Marine                                       | 0        | 0                    | 1         | 0        | 0         | 0         |           |            |
| <b>TOTALS</b>                                | <b>3</b> | <b>11</b>            | <b>7</b>  | <b>2</b> | <b>5</b>  | <b>8</b>  | <b>36</b> |            |
| <b>%</b>                                     | <b>8</b> | <b>31</b>            | <b>19</b> | <b>6</b> | <b>14</b> | <b>22</b> | <b>-</b>  | <b>100</b> |



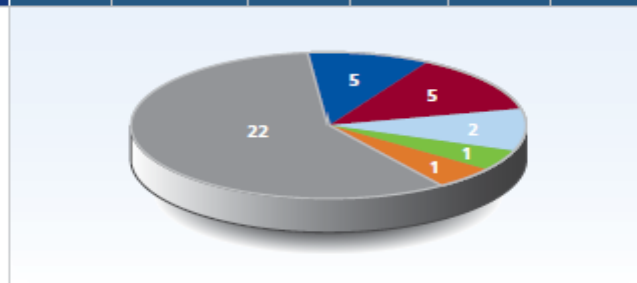




# Hearings By Category in 2010-2011

Fiscal Year 2010–2011

| HEARINGS BY CATEGORY                                     |          |                      |          |          |          |          |           |
|--|----------|----------------------|----------|----------|----------|----------|-----------|
| Category   | Pacific  | Prairie and Northern | Ontario  | Quebec   | Atlantic | HQ       | TOTALS    |
| <b>MEDICALS</b>  |          |                      |          |          |          |          |           |
| Marine   | 0        | 0                    | 0        | 0        | 0        | 5        | 5         |
| <b>SUSPENSIONS</b>                                       |          |                      |          |          |          |          |           |
| Aviation   | 0        | 2                    | 1        | 1        | 0        | 1        | 5         |
| <b>CANCELLATIONS</b>                                     |          |                      |          |          |          |          |           |
| Aviation   | 0        | 1                    | 0        | 1        | 0        | 0        | 2         |
| <b>FINES</b>   |          |                      |          |          |          |          |           |
| Aviation   | 3        | 8                    | 4        | 0        | 1        | 0        | 22        |
| Marine   | 0        | 0                    | 2        | 0        | 4        | 0        |           |
| <b>REFUSALS TO ISSUE</b>                                 |          |                      |          |          |          |          |           |
| Aviation   | 0        | 0                    | 0        | 0        | 0        | 1        | 1         |
| <b>NOTATION – REFUSAL TO REMOVE NOTATION FROM RECORD</b> |          |                      |          |          |          |          |           |
| Aviation   | 0        | 0                    | 0        | 0        | 0        | 1        | 1         |
| <b>TOTALS</b>  | <b>3</b> | <b>11</b>            | <b>7</b> | <b>2</b> | <b>5</b> | <b>8</b> | <b>36</b> |



● Medicals ● Suspensions ● Cancellations ● Fines ● Refusals to Issue ● Notation Refusal



# Historical Data

Fiscal Year 2010–2011

| COMPARISON OF CASES WORKED ON FOR THE PAST FIVE YEARS |            |            |            |            |            |
|---|------------|------------|------------|------------|------------|
| Region  | 2010-2011  | 2009-2010  | 2008-2009  | 2007-2008  | 2006-2007  |
| Pacific   | 41         | 41         | 33         | 43         | 48         |
| Prairie and Northern                                  | 83         | 88         | 71         | 82         | 50         |
| Ontario   | 47         | 37         | 40         | 42         | 46         |
| Quebec  | 56         | 39         | 45         | 59         | 44         |
| Atlantic  | 20         | 30         | 16         | 20         | 11         |
| HQ  | 46         | 26         | 11         | 12         | 12         |
| <b>TOTALS</b>   | <b>293</b> | <b>261</b> | <b>216</b> | <b>258</b> | <b>211</b> |

| TOTAL CASES CONCLUDED WITH A HEARING BY REGION SINCE 1986 |         |                      |         |        |          |    |              |
|---|---------|----------------------|---------|--------|----------|----|--------------|
| Summary   | Pacific | Prairie and Northern | Ontario | Quebec | Atlantic | HQ | TOTALS       |
| Total hearings  | 183     | 643                  | 345     | 384    | 153      | 41 | <b>1 749</b> |
| %   | 10      | 37                   | 20      | 22     | 9        | 2  | 100          |

Of the 1,749 cases concluded with a hearing, 1,401 were reviews (80%) and 348 were appeals (20%).

| CASELOAD FOR THE PAST FIVE YEARS |           |           |           |           |           |
|----------------------------------|-----------|-----------|-----------|-----------|-----------|
|                                  | 2010-2011 | 2009-2010 | 2008-2009 | 2008-2007 | 2006-2007 |
| New requests                     | 149       | 130       | 112       | 141       | 89        |
| Settled without a hearing        | 92        | 87        | 75        | 125       | 52        |
| Review hearings                  | 28        | 34        | 30        | 29        | 28        |
| Appeal hearings                  | 8         | 9         | 8         | 8         | 11        |



## Défis du TATC

- » **Autoreprésentation** - Comme tout tribunal ou cour quasi judiciaire, le Tribunal peut parfois difficilement répondre aux préoccupations ou remédier au manque de connaissances des parties non représentées qui comparaissent devant lui.
- » **Imprévisibilité** – Les parties peuvent résoudre les questions en litige à n'importe quel moment jusqu'au jour de l'audience de révision ou d'appel.
- » **Recrutement** – Le recrutement du personnel et des conseillers à temps partiel du Tribunal est et demeurera sans doute un défi important pour le Tribunal.



## Défis du TATC (*suite*)

- » **Expertise** - Il est essentiel que le conseiller affecté au dossier détienne l'expertise dans le domaine de transport approprié. Le nombre limité de conseillers à temps partiel spécialisés dans un domaine donné peut compliquer la mise au rôle des audiences de révision et d'appel.
- » **Organiser les audiences** – Les audiences de révision et d'appel se tiennent d'un océan à l'autre. Le Tribunal fait face partout au pays à des défis importants liés au climat, aux infrastructures et à la planification des audiences.
- » **Avenir** – On s'attend à un nombre élevé d'audiences de révision dans la mesure où les intervenants de l'industrie maritime découvrent le rôle du Tribunal et s'y habituent.



Questions?

*Thank you for the privilege of  
presenting to you today!*

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