



Transportation Appeal  
Tribunal of Canada

Tribunal d'appel des  
transports du Canada

# ANNUAL REPORT

2016-2017



AVIATION



MARINE



BRIDGES



RAIL



TUNNELS

Canada 

# ANNUAL REPORT • 2016-2017

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May 19, 2017

**The Honourable Marc Garneau, P.C., M.P.**  
**Minister of Transport**  
**Transport Canada**

Place de Ville, Tower "C"  
330 Sparks Street, 29<sup>th</sup> Floor  
Ottawa, Ontario K1A 0N5

**Dear Honourable Minister:**

**RE: ANNUAL REPORT 2016-2017**

In reference to the above and pursuant to section 22 of the *Transportation Appeal Tribunal of Canada Act*, I am very pleased to submit to Parliament, through your intermediary, the Annual Report of the Transportation Appeal Tribunal of Canada for the fiscal year 2016-2017.

It is an honour and a privilege to continue to serve Canadians in the national transportation sector.

Respectfully,



**John Badowski, MSM**  
Chairperson

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Canada



**Transportation Appeal Tribunal of Canada**

# **ANNUAL REPORT 2016-2017**



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# MESSAGE FROM THE CHAIRPERSON



It is my pleasure to present the 2016-2017 Annual Report of the Transportation Appeal Tribunal of Canada as we embark on our 31<sup>st</sup> year. The Tribunal, or the TATC, is an independent and transparent avenue of adjudication that serves Canadians by conducting hearings of federal enforcement and licensing decisions in the transportation industry.

The Tribunal hears cases across the country in the aviation, marine, rail, and the international bridges and tunnels sectors. Through an adjudicative process of Reviews and Appeals, we continue to play a unique and active role in the relationship between the federal government and the transportation community.

Over the past year, the Tribunal experienced a steady intake of Review and Appeal requests, on par with previous years. The Tribunal's mandate continues to expand with the addition of the new *Vessel Fire Safety Regulations* and the *Interim Order Respecting the Use of Model Aircraft*, along with amendments to the *Ballast Water Control and Management Regulations*. Changes are also expected to the *Canadian Aviation Regulations* and the *Motor Vehicle Safety Act*, and proposed amendments to the *Railway Safety Act* have been tabled in Parliament, all of which will add to the Tribunal's caseload.

In terms of results, I am very pleased to report that almost all pending cases from 2009 through 2014 were closed as a result of scheduling efforts in the second half of the year. The number of Review Hearings and total hearing days rose to nearly double over last year, with only a slight increase in our decision processing time. This has been achieved through the dedication of our part-time Members in taking on a large number of cases, and through the tireless efforts of the staff at headquarters who kept up with the increase in their workload.

Operational challenges for the Tribunal continue as the new Member appointment process is still underway and we continue our efforts to schedule hearings expeditiously. We are also working to project the needs of the Tribunal in preparation for cases involving motor vehicle safety, and new transportation technologies such as unmanned air vehicles and personal flying platforms.

As always, it remains an honour and a privilege to work with such a dedicated group of Members and Public Servants, and to continue to serve Canada in this role.

A handwritten signature in black ink, reading "John Badowski". The signature is stylized and fluid.

**John Badowski, MSM**

Chairperson



# OVERVIEW

## Introduction

The Transportation Appeal Tribunal of Canada replaced the Civil Aviation Tribunal in 2003, originally established under Part IV of the *Aeronautics Act* in 1986. On the recommendation of the Minister of Transport, pursuant to section 73 of the *Transportation Appeal Tribunal of Canada Act*, assented to on December 18, 2001, being chapter 29 of the Statutes of Canada, 2001, the Act officially came into force on June 30, 2003.

The Tribunal is available to hear Review and Appeal Hearings originating from the aviation, marine, rail, and international bridges and tunnels sectors. The Tribunal provides an independent review process for anyone who has been given notice of an administrative or enforcement action taken by the Minister of Transport, or the Canadian Transportation Agency (CTA), under various federal transportation Acts.

### MANDATE

*The Tribunal's principal mandate is to hold Review and Appeal Hearings at the request of interested parties with respect to certain administrative actions taken under various federal transportation Acts.*

Section 2 of the *Transportation Appeal Tribunal of Canada Act* establishes the Tribunal, and sets out its jurisdiction and decision-making authorities as provided by a variety of federal transportation legislation, including the *Aeronautics Act*, the *Canada Shipping Act, 2001*, the *Marine Transportation Security Act*, the *Railway Safety Act*, the *Canada Transportation Act*, the *International Bridges and Tunnels Act*, the *Canada Marine Act*, and the *Navigation Protection Act*.

## Objective and Description

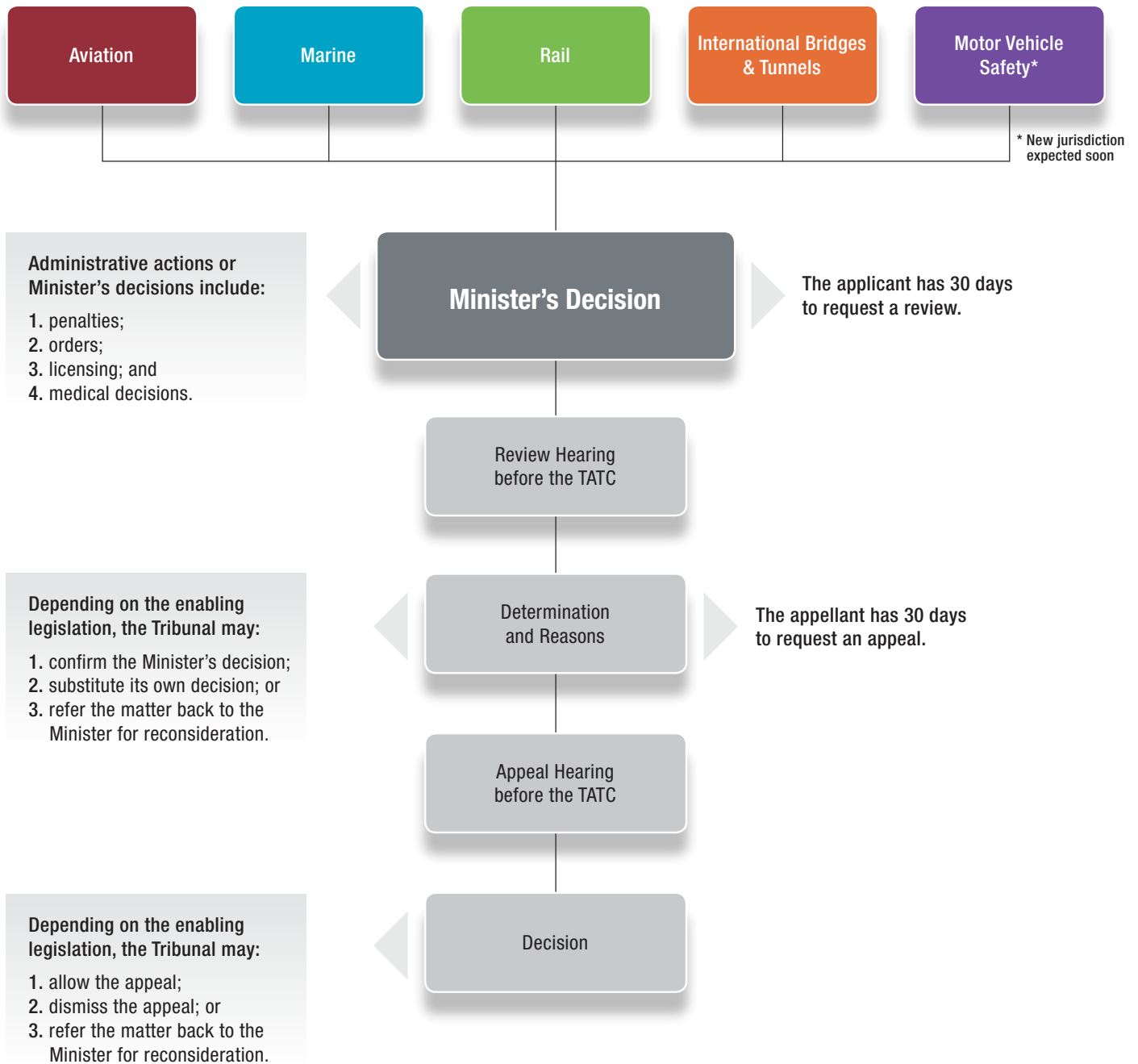
The Tribunal's objective is to provide the multimodal transportation community with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent, quasi-judicial body specialized in transportation law.

The Minister's decisions may include the issuance of orders, the imposition of monetary penalties or the suspension, cancellation or refusal to renew, issue or amend documents of entitlement on medical or other grounds. The person or corporation requesting a review before the Tribunal is referred to as the applicant or document holder.

These decisions are reviewed through an adjudicative process that includes Review Hearings and Appeal Hearings. All hearings are held expeditiously and informally, in accordance with the rules of natural justice.

At the conclusion of a hearing and depending on the type of disposition included in the enabling legislation, the Tribunal may confirm the Minister's decision, substitute its own decision, or refer the matter back to the Minister for reconsideration. This decision or determination is not done orally and, according to the *Transportation Appeal Tribunal of Canada Act*, must be rendered in writing by the Member.

# OVERVIEW





## Basic Principles

The basic principles governing the Tribunal are those of independence and transportation expertise. The sound, competent, and comprehensive execution of the Tribunal's mandate determines its effectiveness in dealing with the national transportation community.

The Tribunal offers its services in both official languages of Canada. It is also itinerant, in the sense that its hearings take place throughout Canada, at the convenience of the parties to the extent possible.

In matters concerning administrative monetary penalties and orders, the hearing generally takes place where the alleged infraction occurred, or the nearest practical alternative, so that witnesses for the parties may present themselves with minimum displacement costs.

In medical and licensing cases, hearings are held at a location nearest to the residence of the document holder which is accessible by commercial transportation.

## Organizational Structure

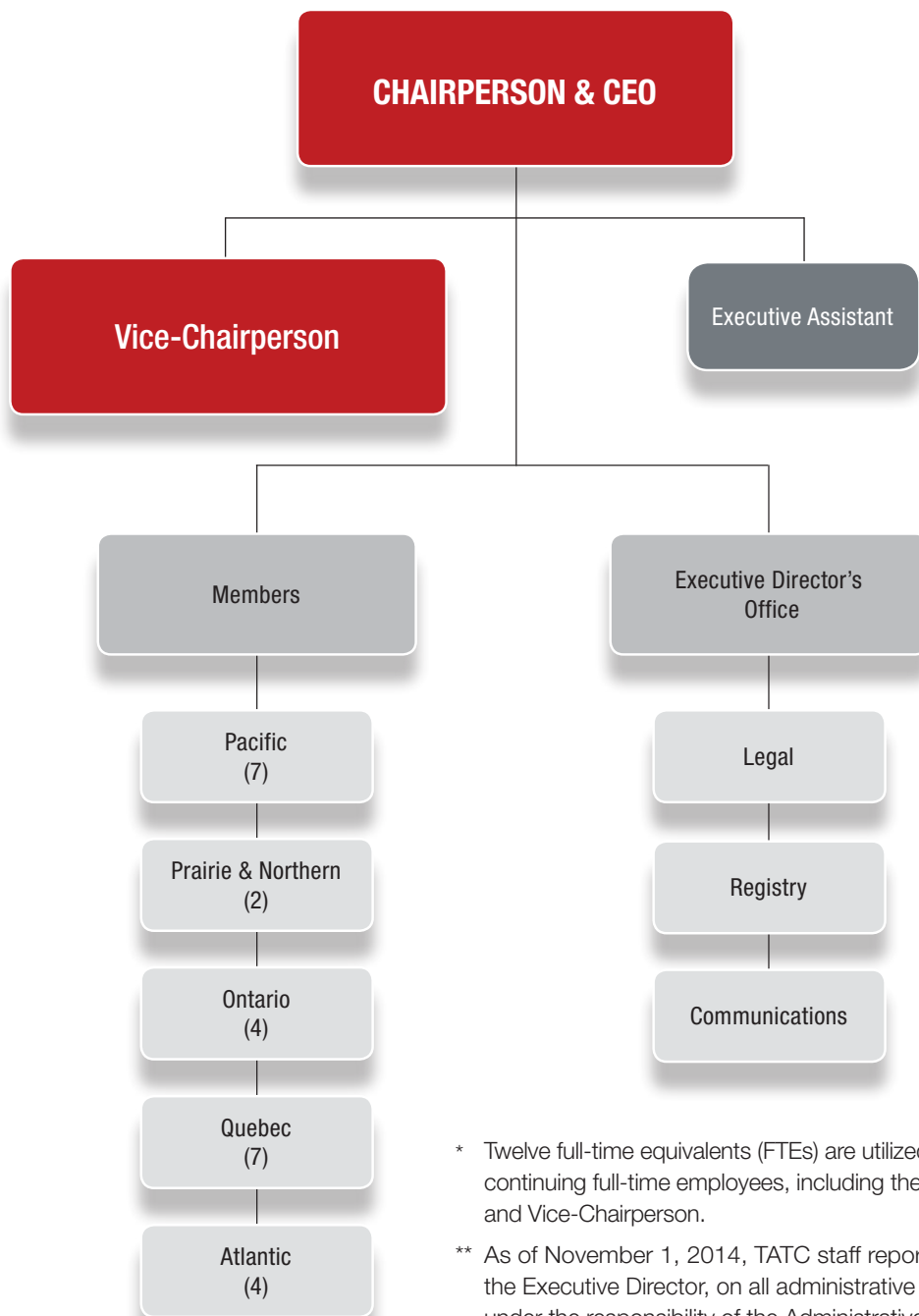
The Tribunal's Chairperson is also its Chief Executive Officer. The Chairperson is responsible for directing and supervising the work necessary to facilitate the functions of the Tribunal. The Chairperson, Vice-Chairperson and immediate staff account for 12 full-time equivalents.

At the end of fiscal year 2016-2017, 24 part-time Members were in office. During the year, two part-time Members retired and 13 part-time Members' terms were renewed. Members are drawn from across Canada and are appointed by Governor in Council on the basis of their transportation knowledge and expertise.



**Tribunal Staff**

# ORGANIZATION CHART



\* Twelve full-time equivalents (FTEs) are utilized by the continuing full-time employees, including the Chairperson and Vice-Chairperson.

\*\* As of November 1, 2014, TATC staff report to the Executive Director, on all administrative matters under the responsibility of the Administrative Tribunals Support Service of Canada (ATSSC).



# 2016-2017 IN REVIEW

## Effectiveness

The Tribunal's effectiveness can be measured by its ability to provide the Canadian transportation community with the opportunity to have Ministerial decisions reviewed fairly, equitably and within a reasonable period of time.

The average lapsed time in 2016-2017 between the conclusion of a Review Hearing and the issuance of a determination is **94** days (an increase of **10** per cent from last year). This result, however, must be viewed against the dramatic increase in caseload which occurred this year.

The Tribunal encourages communication and the exchange of documents by the parties to assist in identifying the issues that can be resolved between them before coming to the Tribunal. This approach reduces the length of hearings and avoids last-minute adjournments necessitated by late disclosure of information.

In the 2016-2017 reporting period, **110** cases were concluded without a hearing. It should be noted that of these cases, many were requests filed with the Tribunal and concluded shortly before the hearing was to take place, which means that all registry work that leads up to the hearing was completed.

The cases concluded without a hearing were resolved in a number of ways: the document holder paid the fine before the hearing commenced; the document holder's licence was reinstated before the hearing; the request for hearing was withdrawn by the document holder; the notice was withdrawn by the Minister; or an agreement was reached between the parties.

**The number of cases, hearings and hearing days increased by up to 88 per cent this year.**

In 2015-2016, the Tribunal had referred **4** cases back to the Minister of Transport for reconsideration (**3** aviation and **1** marine). We are awaiting the outcome in all of these cases.

In 2016-2017, the Tribunal referred **6** cases (**2** aviation, **1** marine and **3** rail) back to the Minister for reconsideration. We are awaiting the outcome in all of these cases as well.

**This year, the Tribunal increased its workload and substantially reduced a backlog of outstanding cases.**

## Examples of TATC Case Law

### AVIATION

#### ***Manan Air Services Inc. v. Canada (Minister of Transport), 2017 TATCE 01 (Review)***

The *Canadian Aviation Regulations* require that an air operator report a service difficulty related to an aircraft it operates. In this case, the applicant was operating an aircraft that suffered an in flight loss of power on the right-hand engine. The engine was successfully shut down, the propeller was feathered by the pilot-in-command and the aircraft landed without incident. The malfunction, however, was not reported. The Minister of Transport issued a monetary penalty to the applicant for not reporting a service difficulty.

The Tribunal found that an engine shut-down is definitely a safety concern and that the incident was a reportable service difficulty as per the regulations. The Tribunal upheld the monetary penalty.

### MARINE

#### ***Harrison v. Canada (Minister of Transport), 2014 TATCE 6 (Review)***

The Minister of Transport issued a notice of violation and monetary penalty to the applicant for failing to register his commercial vessel as required by the *Canada Shipping Act, 2001*. The applicant appealed to the Tribunal, arguing that he only chartered his vessel occasionally, and that he had followed the instructions provided by Transport Canada to register his vessel but the application had been lost.

In reviewing the elements to be proven by the Minister on a balance of probabilities, the Tribunal found that the applicant was operating a vessel for commercial purposes by transporting two individuals that were paying passengers on board when the vessel was stopped by the RCMP. However, the Tribunal determined that insufficient evidence was adduced by the Minister to establish that the vessel was wholly owned by a “qualified person” as required by the Act. Moreover, although the vessel was not correctly registered at the time of the incident, the applicant successfully argued that he had taken all reasonable measures and due diligence to ensure that his vessel was registered correctly. As such, the Tribunal dismissed the monetary penalty against the applicant.



## RAIL



### ***Canadian National Railway v. Canada (Minister of Transport), 2016 TATCE 30 (Review)***

The Minister of Transport alleged that the applicant's practice of not considering deadheading and transit time as on-duty time resulted in an immediate threat to railway safety by creating excessive cumulated fatigue that led to reduced necessary alertness in operating crews while they are in care and control of trains. The Minister issued an order to the applicant to include all deadheading and transit time to and from a rest facility at the away-from-home terminal into duty time.

The Tribunal concluded that the evidence did not support the allegation that there was an immediate threat to railway safety due to cumulated fatigue related to the non-compliance of the *Work/Rest Rules for Railway Operating Employees*, as all mandatory rest time under the *Rules* was respected. The Tribunal found that there was no evidence supporting the claim of cumulated fatigue. The Tribunal also found that Transport Canada accepted the *Rules* submitted in 2009 by the industry, and that the interpretation and application was only challenged and deemed as an immediate threat seven years later by the order. The matter was therefore referred back to the Minister for reconsideration.



# 2016-2017 IN REVIEW

## Training and Development

When new Members are appointed, they receive in-house training in all aspects of administrative law and the conduct of hearings. Serving Members receive monthly professional development, including webinars and case law updates. Legal Counsel is available to assist during pre-hearing, hearing and post-hearing matters. Members and staff are encouraged to undergo annual professional education. This combined approach helps Members to maximize their effectiveness in the adjudicative process, to keep abreast of developments in administrative law and the federal transportation sector, and to render decisions according to the values and expected outcomes mandated to the Tribunal. Moreover, the anticipation of several new appointments of part-time Members in 2017 has prompted the Tribunal to bolster and expand the training program for new and current Members.

Training resources for Members and staff are available in various formats, including online, electronic and traditional published formats. Communication with Members is continuous and there are also monthly communications from the Chairperson regarding the Tribunal's business and legal updates.

The Tribunal's policies have recently been updated and posted on the TATC website, with the full suite of policies, including those pertaining to internal administration, provided to all Members in the form of a policy manual.

The Tribunal is currently developing a more user friendly and performant search engine for its case law. Upon implementation in 2017, Tribunal Members and the general public will be able to perform more advanced searches of TATC decisions. As well, the creation of an online library for Tribunal Members exclusively will facilitate the distribution of professional development material created by Legal Counsel for the Members.

Internally, a new database has been created for headquarters staff as a resource for transportation and sector-specific terminology. The database is currently being populated, and once fully implemented, will enable users to quickly research a wide variety of terms for definitions and explanations.

The Tribunal is committed to providing continuous learning opportunities to all current and new Members. This year, some of our Members and staff attended several learning events: the Annual Symposiums and Adjudication and Decision Writing courses from the Council of Canadian Administrative Tribunals (one Member); the B.C. Administrative Tribunal Conference (one Member); the Federal Regulatory Law Enforcement Symposium (two Members and legal staff); the Federal Court of Appeal and Federal Court Education Seminar: Maritime Law (two Members and legal staff); and Editors Canada: Substantive Editing Seminar (one staff member).

The Tribunal's ongoing success can be attributed to the importance placed on the training and development of its Members and staff.





## Public Outreach

The TATC Chairperson, Mr. Badowski, attended two meetings of the Air Line Pilots Association (ALPA) held in Ottawa this year. He was also invited to make a presentation to Transport Canada during their national symposium for case presenting officers. He continues to participate in the Council of Federal Tribunal Chairs (formerly the Heads of Federal Administrative Tribunals Forum) and the Heads of Federal Agencies.

Mrs. Jacqueline Corado, Senior Legal Counsel to the Tribunal, is actively involved with the Council of Canadian Administrative Tribunals on two committees: the Professional Development Committee and the Access to Justice and Adjudicative Excellence Committee. Through this involvement, the Tribunal has been able to participate in the creation of excellence standards and surveys for Canadian tribunals, as well as provide input and assistance for courses given to federal and provincial tribunal members.

In preparation for a potential case in the International Bridges and Tunnels sector, Ms. Nancy Konan-Waidhet, Executive Assistant to the Chairperson, prepared a study of all structures in Canada that fall under the Tribunal's mandate. The final report was presented to the TATC and to Chairpersons from other Tribunals. The written briefing was shared with all current Members.

As well this year, a new *Guide for Self-Represented Applicants* was finalized and posted on the website. The *Guide* is now routinely mailed to all applicants to assist them through the hearing process.

Finally, the Chairperson is proud to announce that the Tribunal fielded a team of runners who participated in the Government of Canada Workplace Charitable Campaign. The six runners from headquarters were: Mrs. Jacqueline Corado, Legal Counsel; Ms. Nancy Konan-Waidhet, Executive Assistant; Mr. Sylvain Gauthier, Editor; Ms. Sylvie Fournier, Registrar; Mr. Sonny Kim, Executive Director; and Mr. Rohan Mathai, Legal Counsel.

## Results and Future Plans

Quality and constant professional development for Members and employees will remain important aspects of the Tribunal's operations. In order to deliver on its mandate and objective, the Tribunal needs to have an adequate number of Members with the right mix of skills and talents in various modes of the transportation sector, as well as legal and medical expertise. To become a part-time member of the TATC, we encourage qualified candidates to visit the Governor in Council Appointments web site, where opportunities will be posted as they become available at <https://www.appointments-nominations.gc.ca>.

The Tribunal is continuing to work on recommendations to amend its legislative authority in order to better meet the needs of the parties, in particular: holding one-person appeal panel hearings as needed, and revised authority for Members in licensing and medical cases. The Tribunal Rules are in the process of being revised, and changes have been proposed to reflect recent amendments to the Tribunal's enabling legislation.

Finally, the Tribunal remains committed to prompt scheduling of hearings to further help reduce case delays. With the large backlog of cases significantly reduced during the past year, the Tribunal is now better positioned to schedule hearings in a timely manner, in particular, within 60 days of the date of application for review (for non-medical cases). As well, the Tribunal continues to maintain its commitment to deliver written decisions within a reasonable timeline.

# TRIBUNAL MEMBER – FULL-TIME



**JOHN BADOWSKI**  
CHAIRPERSON

Mr. John Badowski was appointed to the Tribunal as chairperson until December 31, 2018. He previously served the Tribunal as vice-chairperson for two years.

Mr. Badowski was a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada (IRB) since 2008 as a presiding member and, subsequently, as coordinating member and team leader. He is also the former chairperson of the IRB's Professional Development Committee and a former member of the International Association of Refugee Law Judges, where he served on its Expert Evidence Working Party.

Mr. Badowski is a recipient of the Meritorious Service Medal of Canada (2002) as well as the Prague Medal from the Government of Romania (2003). He is also the former chairperson of the Heads of Federal Administrative Tribunals Forum. He holds a bachelor of science degree from the University of Toronto and is currently studying towards a master of science degree.





# TRIBUNAL MEMBERS – PART-TIME

The following is a complete list of part-time Members who served on the Tribunal in fiscal year 2016-2017.

## Christopher J. Brooks

Kanata, Ontario



### Appointed to a part-time term of three years on April 10, 2014.

Dr. Christopher Brooks is a physician, scientist and inventor. Dr. Brooks has 47 years of experience as a physician in the navy, in industry and in private practice. His background includes a wide range of positions such as medical officer onboard a nuclear submarine, flight surgeon, commanding officer for the Royal Canadian Navy at Stadacona Hospital in Halifax, and command surgeon for both the Canadian Air Command and the Canadian Maritime Command. For 11 years, he was the Director of R&D at Survival Systems Ltd., Dartmouth, N.S., where he introduced emergency breathing systems into helicopters for the Canadian offshore oil industry. Currently, he is a consultant in occupational medicine for the Transportation Safety Board of Canada and the Department of National Defence. Among the awards Dr. Brooks has received are the Order of Military Merit, Queen's Jubilee Medal and the Canadian General Standards Board's highest achievement award for his work on survival suits and life jackets. In addition, he has published over 70 books, reports and papers on occupational health and safety issues.

## Brad M. Caldwell

Vancouver, British Columbia



### Reappointed to a part-time term of three years on April 10, 2014.

Mr. Caldwell holds a Bachelor of Laws degree from the University of Victoria Law School and an advanced mediation certificate. He has practiced law since his admission to the British Columbia Bar in 1986, with an emphasis on maritime and fisheries litigation, general commercial litigation and administrative law. Prior to his legal career, Mr. Caldwell gained practical experience in the marine industry as a fisherman, deckhand, commercial diver and longshoreman. His professional associations include the Canadian Maritime Law Association, the Law Society of British Columbia and the Marine Insurance Association of British Columbia.

## Caroline Desbiens

Sainte-Foy, Quebec



### Reappointed to a term of three years on June 18, 2015.

A lawyer since 1988, she works principally in the areas of aviation and maritime law. Ms. Desbiens received a law degree from the University of Laval in 1987, and a diploma in International Law and Comparative Law from the University of San Diego in 1988. Ms. Desbiens received a Master's degree in Air and Space Law from McGill University in 1993. A member of the Barreau du Québec, Ms. Desbiens is also a member of the Canadian Bar Association, the Association québécoise des transporteurs aériens, the Institute of Air and Space Law Association, the Canadian Maritime Law Association and the Chambre de commerce de Québec.

# TRIBUNAL MEMBERS – PART-TIME

## Patrick Terrence Dowd

Port Colbourne, Ontario



### Reappointed to a part-time term of three years on June 18, 2013.

Captain Dowd holds a Bachelor of Arts from the University of Toronto and a Bachelor of Laws from the University of Windsor. He served as an Air Force Officer, a Flight Instructor and Transport Pilot in Europe. He simultaneously performed duties as a pilot and assisted with the responsibilities of Counsel to Air Canada. He entered private practice as an Associate to the firm of Helson, Kogan, Ashbee, in Georgetown, Ontario, where he eventually became a sole practitioner. After his career at Air Canada, he was invited to join Skyservice Airlines and rose to become Chief Pilot, and later Director of Flight Operations. Captain Dowd was invited by Boeing to join Alteon, their training company in Korea, as an Airbus instructor, where he became a Check Pilot for the Korean Government on A320/321 and A330 aircraft. He holds a current Korean Airline Transport Pilot's Licence and a renewable Canadian Airline Transport Pilots Licence.

## Gary Drouin

Chelsea, Quebec



### Reappointed to a term of one year on November 22, 2016.

Mr. Drouin has over 30 years of experience in management and administration, including 25 years in the rail portfolio at Transport Canada. He was also a consultant on air cargo security matters for the department. Mr. Drouin has actively promoted level crossing safety and trespass prevention through the former outreach and education program, Direction 2006. Through his skills in facilitating partnership building, sharing knowledge, and fostering collaboration on projects, he has contributed to Canada being recognized as a world leader in railway safety. Mr. Drouin has received several awards for excellence, including from l'Association du transport écolier du Québec for his work on school transport safety, an Award of Excellence and Achievement in the Canadian Public Service (2003), a Presidential Award USA (1998), and many more. He has been a member of a number of organizations including the Federation of Canadian Municipalities and the Canadian Association of Police Chiefs.



## Mark A.M. Gauthier

Gatineau, Quebec



### Reappointed to a part-time term of one year on June 15, 2016.

Mr. Gauthier received a Bachelor of Laws Degree from the University of Ottawa, Faculty of Common Law, in 1972 and was called to the Bar of the Law Society of Upper Canada in 1974. He was engaged in the general practice of law from his call to the Bar until he joined Justice Canada in 1982. Mr. Gauthier practiced maritime law in the Legal Services Unit of Transport Canada as Counsel and as Senior Counsel from 1982 until 2005 and thereafter as the General Counsel of the Maritime Law Secretariat until he retired in June 2011. During his career, he provided general legal services to the marine sector of Transport Canada and, in particular, was responsible for the development of major marine legislative and regulatory initiatives such as the *Canada Shipping Act, 2001*, and the *Marine Liability Act*. Mr. Gauthier also represented Canada for many years as Head of Delegation to the Legal Committee of the International Maritime Organization and as Alternate Head of Delegation to the International Oil Pollution Compensation Funds. While acting in those positions, he was involved in the negotiation and adoption of several international shipping treaties, many of which were implemented subsequently into Canadian law. Mr. Gauthier is a member of the Law Society of Upper Canada, an Honorary Life Member of the Canadian Maritime Law Association and a Titulary Member of the Comité Maritime International.

## Trevor Allan Gillmore

Kleinburg, Ontario



### Reappointed to a part-time term of one year on June 15, 2016.

Dr. Gillmore holds a Doctor of Medicine Degree from McMaster University. In 2008, he received his Fellowship in Occupational Medicine and completed a Master's Degree in Aviation Medicine through Otago University in New Zealand. He currently serves as a Provincial Coroner for Ontario. He is also a Flight Surgeon and Pilot for Air Canada and a Medical Support Specialist for the Transportation Safety Board of Canada. He was previously an Emergency Room Physician at three Greater Toronto Area hospitals. He has worked and trained extensively in the forensic sciences field and is a member of a number of committees and associations, including the College of Physicians and Surgeons of Ontario and the Canadian Aerospace Medical Association.



# TRIBUNAL MEMBERS – PART-TIME

## David G. Henley

Halifax, Nova Scotia



### Reappointed to a part-time term of three years on October 30, 2014.

Mr. Henley is vice-president and general counsel at Irving Shipbuilding Inc. Prior to joining Irving Shipbuilding, he was a partner in the Halifax office of the law firm of Stewart McKelvey for 14 years. He is a graduate of the University of New Brunswick (Bachelor of Business Administration in 1989 and Bachelor of Laws in 2000) and Dalhousie University (Master of Laws in Marine and Environmental Law in 2003). After a career in the army as an artillery officer, Mr. Henley was admitted to the Nova Scotia Bar in 2001. He retired from the Canadian Army Reserve as a Brigadier-General in 2015 with 30 years of service. After returning from a tour in Afghanistan in 2010, he was awarded the Bronze Star Medal by the United States and invested as a Member of the Order of Military Merit by the Governor General. Mr. Henley is a past chair of the Marine Practice Group of Stewart McKelvey and of the CBA Environmental Law Subsection, Nova Scotia. He has written, presented and published papers on a variety of marine and environment-related subjects. Mr. Henley is an Associate of the Marine Environmental Law Institute and a member of the part-time faculty at the Schulich School of Law where he taught Fisheries Law from 2004 to 2015.

## Sarah M. Kirby

Halifax, Nova Scotia



### Reappointed to a part-time term of one year on June 15, 2016.

A part-time Member of the Transportation Appeal Tribunal of Canada since 2012, Sarah Kirby was admitted to the Nova Scotia Barristers' Society as Barrister and Solicitor in 2000. From 2000 until 2011, she practiced law as a civil litigator in private practice in Nova Scotia with a focus on the marine transportation sector and made appearances in the Federal Court of Canada, the Nova Scotia Supreme Court and the Nova Scotia Provincial Court. From 2011 to 2015, she was an Assistant Dean at the Schulich School of Law at Dalhousie University, and since 2012 has served as a part-time Adjudicator for the Small Claims Court of Nova Scotia. Ms. Kirby is now a Crown Prosecutor with the Public Prosecution Service of Nova Scotia. Ms. Kirby has served as an active member of the Canadian Maritime Law Association, the Women's International Shipping and Trading Association and the Eastern Admiralty Law Association. She is currently a member of the Nova Scotia Barristers' Society's Credentials Committee and Internal Review Sub-committee as well as a member of The Advocates' Society Nova Scotia Regional Advisory Committee.



## Herbert Lee

Richmond, British Columbia



### **Reappointed to a part-time term of three years on October 30, 2014.**

Mr. Lee is the managing director of LTA Holidays (Canada) Ltd., a Vancouver-based IATA travel agency. He is also a private pilot and a certified travel manager. Mr. Lee is a member of the Richmond Chamber of Commerce, the Hong Kong Aviation Club, the Royal Canadian Mounted Police Advisory Committee for Multiculturalism in Richmond, and the Consumer Protection of British Columbia Advisory Committee. Mr. Lee is a former Air Crew member (volunteer) for the Royal Hong Kong Auxiliary Air Force, and a former Assistant Superintendent of Hong Kong Air Terminal Services Ltd. for Hong Kong Kai Tak Airport. He has studied at Simon Fraser University, the Hong Kong Polytechnic University and the Royal Navy School in the United Kingdom.

## J. Ed Macdonald

Pictou County, Nova Scotia



### **Reappointed to a part-time term of one year on December 13, 2016.**

Mr. Macdonald is a retired commercial aviation pilot whose 31 years of employment with several major airlines reflects an outstanding record of performance, reliability and commitment. He retired as a captain from Air Canada after flying on domestic and international routes on various passenger aircraft. During his career, Mr. Macdonald amassed 18,000 flight hours, an achievement that required both a high level of technical skill, and strong team-building and leadership abilities. A graduate of Rothesay Collegiate in New Brunswick, Mr. Macdonald was born in New Glasgow, Nova Scotia and lives in Pictou County, where he is active in the community as a volunteer.

## Tracy Medve

Kelowna, British Columbia



### **Appointed to a part-time term of three years on October 30, 2014.**

Ms. Medve is President of the Kelowna Flightcraft Group of Companies and prior to this was President of Canadian North Airlines in Yellowknife. Since 1985, she has held various senior airline management positions at Norcanair, Time Air, and Canadian Regional Airlines. Prior to joining Canadian North in 2007, she was the co-founder of C.T. AeroProjects, a Calgary based consultancy focused on air transport resource management. A lawyer by training, she also graduated from the John Molson School of Business Global Aviation MBA program at Concordia University in 2009. Ms. Medve is the current Chair of the Air Transport Association of Canada (ATAC) and the first woman in Canada to be inducted as an Honourary Life Member. She sits as a member of the University of British Columbia, Okanagan External Community Advisory Council. She is also a past member of the Transportation Appeal Tribunal of Canada, having served from 2003 to 2006.

# TRIBUNAL MEMBERS – PART-TIME

## Arnold Marvin Olson

Langley, British Columbia



### Reappointed to a part-time term of one year on June 15, 2016.

Mr. Olson, Captain (ret.), recently completed a 32-year flying career, retiring as an approved check pilot – Boeing 767, based in Vancouver, and flying international routes. His previous assignments have included a management position as senior check pilot – Embraer 170/190, a training captain – Airbus 320, and a crew resource management facilitator conducting courses dealing with issues of pilot judgment. A graduate of Simon Fraser University (B.Sc.), Mr. Olson has attended various industry courses, such as: Human Factors in Aviation, Aviation Safety Program Management, and Conflict Resolution in the Workplace. He has served as Director, Trinity Western University Institute of Aviation. He is the founder of the Air Canada Pilots Bone Marrow Registry Program. He has received the Honouring Our Lifeblood Award from Canadian Blood Services and the Award of Excellence from Air Canada. He founded and chaired the Canadian Cancer Society Langley Relay for Life, was Chair of the 2013 Special Olympics BC Summer Games Organizing Committee and has served as the treasurer of Hope International Development Agency.

## James R. Parsons

St. John's, Newfoundland and Labrador



### Reappointed to a part-time term of one year on October 5, 2016.

Mr. Parsons is a director, coordinator and lecturer at the Fisheries and Marine Institute of Memorial University, and he has held these positions since 1997. He has been responsible for the development and delivery of oil tanker, floating production storage and offloading, mobile offshore drilling unit, and marine regulatory awareness training programs for clients working with the Hibernia and Terra Nova projects. Previously, Mr. Parsons was a marine consultant at Bateman Chapman (Canada) Ltd. and he owned OTI Canada Group, a company involved in marine surveying, cargo inspections and safety and pollution control. Currently he owns a marine consultancy called Global Marine Solutions. He is a Master Mariner with significant experience in Canadian Arctic waters and, among his many degrees, he has a PhD in marine transportation and economics from the University of Plymouth in England, and a bachelor of maritime studies from Memorial University.

## Robert Perlman

Montreal, Quebec



### Appointed to a part-time term of five years on April 5, 2012.

Dr. Perlman holds degrees in psychology and medicine from McGill University. He is certified in family medicine, is a fellow of the College of Family Physicians of Canada (CFPC) and is certified in aviation medicine from King's College, London, United Kingdom, and from France to perform European Aviation Safety Agency (EASA) medicals for pilots, crew and air traffic controllers. He is currently the chief executive officer and director of Mediservice, a medical clinic he founded in 1984 that provides commercial pilot and air traffic controller licensing exams for Canada, the United States, the United Kingdom and Europe. Dr. Perlman is also an attending physician and an associate professor of family medicine at the Jewish General Hospital in Montreal.

## Alex Phillips

Edmonton, Alberta



### Reappointed to a part-time term of one year on June 21, 2016.

Mr. Phillips, of Edmonton, is a lawyer based in Edmonton, Alberta, with over 25 years of experience providing legal counsel and policy advice on transportation network matters, including deregulation, aviation licensing, export trade competitiveness and transport safety regulation. He is also a former Director of Regulatory Strategy at ATCO Electric Transmission where he provided legal and strategic policy advice on the activities of Alberta's regulatory agencies and their governing legislation to help develop Alberta's electricity transmission network in a safe and efficient manner. Among Mr. Phillip's qualifications are a bachelor of laws from the University of Manitoba, master of laws in international air law and deregulation from the London School of Economics, and a doctorate of juridical science in competitive network access rights from Bond University, Australia.

## Franco Pietracupa

Dollard-des-Ormeaux, Quebec



### Reappointed to a part-time term of one year on October 4, 2016.

Mr. Pietracupa received his College Diploma in Aeronautical Pilot Instruction in 1997. He has worked for various companies in aviation, including CESSPA Flight College, and held the position of Class 1 instructor/chief flight instructor from 1997 to 2000 in different flight training organizations. With his extensive experience as a flight instructor and operator, he was designated as a flight test examiner with Transport Canada. Since April 2011, Mr. Pietracupa has held the position of Chief Pilot, Business Customer Liaison Pilots at Bombardier Aerospace in Montreal.

## George E. Pugh

Vancouver, British Columbia



### Reappointed to a part-time term of eight months on March 28, 2017.

Dr. Pugh is a Consultant in Emergency Medicine and has been an Emergency Physician at Providence Healthcare Society in Vancouver since 1994. He has worked at Mount St. Joseph Hospital in Vancouver, where he filled various positions, including director of Emergency, head of the Department of Family Practice and emergency physician. Dr. Pugh is a member of the Royal College of Physicians and Surgeons of Canada, the Canadian Medical Association, the British Columbia Medical Association, the Canadian Association of Emergency Physicians and the College of Family Physicians of Canada. His areas of special interest and accomplishment include aviation (commercial fixed and rotary wing pilot), maritime transportation (cruise ship medicine) and road transportation.



# TRIBUNAL MEMBERS – PART-TIME

## Suzanne Racine

Kirkland, Quebec



### **Reappointed to a part-time term of one year on December 13, 2016.**

Ms. Racine, a lawyer since 1980, holds a Licence in Civil Law from the University of Ottawa (1979), Mediator training (1992), and a Master's Degree from the Institute of Air and Space Law, McGill University (1987). She was a director of Regulatory and Government Affairs at Air Transat and has acted as a consultant in the areas of travel and air transport. Ms. Racine is a Member of the Barreau du Québec and the Institute of Air and Space Law Association.

## Stephen Rogers

Vancouver, British Columbia



### **Reappointed to a part-time term of one year on January 30, 2017.**

Mr. Rogers was a Member of the British Columbia Legislative Assembly for 16 years. He served as a cabinet minister in several portfolios, including Minister of Transportation and Highways, and as Speaker and Deputy Speaker of the House. He began his career as a pilot with the Royal Canadian Air Force and flew commercial aircraft with Air Canada prior to and after his career in politics.

## Laura Safran

Calgary, Alberta



### **Appointed to a part-time term of four years on April 25, 2013.**

Ms. Safran, Q.C. is a senior partner at the law firm Davis LLP in Calgary specializing in corporate and commercial, intellectual property and technology law. She is also the head of Davis LLP's national aviation law practice, and co-head of their education law practice. Prior to that, she was a partner at Fraser Milner Casgrain LLP from 1996 to 2010. She has held other executive positions as vice-president, law and corporate secretary of Canadian Airlines International from 1989 to 1995. Ms. Safran is a member of the law societies of Alberta and British Columbia. She holds an L.L.M. (doctorate of jurisprudence program) from Columbia University, an L.L.M. from the London School of Economics, an L.L.B. from Osgoode Hall, York University, and a bachelor of arts with distinction from the University of Alberta. She was named one of Canada's Most Powerful Women by *The Globe and Mail* in 2004, as well as one of the leading women lawyers in Canada in 2009 by the *Canadian Legal Expert Directory*.



## John M. Sehmer

Vancouver, British Columbia



### **Appointed to a part-time term of three years on April 10, 2014.**

Dr. Sehmer is a Clinical Assistant Professor at the University of British Columbia Medical School in the Department of Family Practice, runs his own general practice, specializing in industrial medicine, and is a staff member at Vancouver General Hospital. He has extensive experience as a certified medical examiner for the marine and air sectors (pilots). In addition Dr. Sehmer is a medical advisor for Great West Life and Desjardins, an occupational medicine consultant for corporations such as the Canadian Imperial Bank of Commerce, Petro-Can/Suncor and Chevron, and is co-chair of the British Columbia Medical Association's WorksafeBC Liaison Committee. Dr. Sehmer has published numerous articles in the Canadian Medical Association Journal and other journals and is a fellow of the Canadian Board of Occupational Medicine.

## Abdo Shabah

Montreal, Quebec



### **Reappointed to a part-time term of eight months on March 28, 2017.**

Dr. Shabah received a Doctorate in Medicine in 2002 from the University of Montréal, as well as a diploma in General Medicine from the same institution in 2005. From 2005 until 2008, Dr. Shabah practiced in Kuujuaq, Quebec, while also undertaking an M.A. in Public Health. He also completed a PhD in Public Health and Preventative Medicine in 2010 from the University of Montréal, and he successfully completed an MBA from McGill and HEC-Montreal. In addition, he was awarded the Governor General of Canada Medal of Excellence in 1995. Dr. Shabah currently works at Hôpital Enfant-Jésus in Emergency Medicine – Aeromedical Evacuation. He also practices Emergency Medicine at CSSS Cœur de l'Île, and he works as director of Professional Services and Medical Affairs at CSSS Pointe-de-l'Île in Montréal. Dr. Shabah continues to participate regularly in humanitarian missions, and he has been deployed on numerous occasions for humanitarian efforts in Haiti.

## Charles Sullivan

Kanata, Ontario



### **Appointed to a part-time term of three years on October 30, 2014.**

Mr. Sullivan is an independent business strategist who advises on aviation, aerospace and security. He joined the private sector in 2009 as Chief of Operational Safety Oversight for Canada's air navigation service provider, following a distinguished 31-year career in the Royal Canadian Air Force. This included, prior to his retirement, a 12-month tour of duty in Afghanistan at the rank of Major-General in key leadership positions as Commander of NATO's Air Component and as Deputy Chief of Joint Operations. Previously, Mr. Sullivan held senior executive positions, such as Director-General of Capability Development at the Department of National Defence Headquarters in Ottawa; and Director of International Security and Senior Defence Advisor in the Prime Minister of Canada's Privy Council Office. In addition, Mr. Sullivan has substantial operational experience in aviation. As a fighter pilot he accumulated over 3500 flying hours flying jet aircraft and flew operational missions over Europe, the Persian Gulf, Bosnia, Croatia, Kosovo, Canada's high Arctic and the North Atlantic.

# TRIBUNAL MEMBERS – PART-TIME

## Yves Villemaire

Stittsville, Ontario



### Reappointed to a part-time term of three years on May 14, 2014.

Mr. Villemaire is a graduate of the Canadian Coast Guard College. He started his career as a ship's officer and served in various parts of the country in a number of shipboard and shore positions. He holds a Canadian Coast Guard Command Certificate and an MBA from Queen's University. He retired from the Canadian Coast Guard in 2007, where he held a number of executive positions including Director General, Fleet, Director General, Maritime Services, and Executive Director of the Canadian Coast Guard College in Sydney, Nova Scotia. Prior to holding these positions, he was Director General, Human Resources for two years with the Department of Fisheries and Oceans. This followed a three-year appointment as Director, Early Conflict Resolution Office, a service he established for the Deputy Minister. Mr. Villemaire is currently a management consultant on a part-time basis.

## Richard Willems

Alton, Ontario



### Reappointed to a part-time term of three years on March 6, 2014.

Mr. Willems is the Senior Captain Flying a Canadair Challenger for Rogers Communications in Toronto. His flying career began in central Saskatchewan in 1963 and has continued through North, Central and South America as well as Africa, Asia and Europe. Mr. Willems has held Transport Canada check pilot authority since 1976 on various piston, turbo-prop and jet aircraft. He has accumulated over 23 000 hours on 124 types of airplanes and gliders.



# RESOURCES

| 2016-2017 DETAILS OF FINANCIAL RESULTS BY OBJECT<br>(Thousands of dollars) |                           |                           |
|----------------------------------------------------------------------------|---------------------------|---------------------------|
|                                                                            | Actual Expenses 2015-2016 | Actual Expenses 2016-2017 |
| <b>GOODS AND SERVICES</b>                                                  |                           |                           |
| Transport-Communications (02)                                              | 73.90                     | 77.78                     |
| Information (03)                                                           | 16.20                     | 10.11                     |
| Professional Services (04)                                                 | 115.90                    | 139.90                    |
| Rentals (05)                                                               | 19.50                     | 22.17                     |
| Repair & Maintenance (06)                                                  | 0.20                      | 0.36                      |
| Materials & Supplies (07)                                                  | 5.10                      | 12.38                     |
| Machinery & Equipment (09)                                                 | 2.40                      | 2.24                      |
| <b>Total Goods and Services</b>                                            | <b>233.20</b>             | <b>264.94</b>             |
| <b>PERSONNEL</b>                                                           |                           |                           |
| Salaries and Wages                                                         | 1,002.00                  | 1,102.48                  |
| Contributions to Employee Benefit Plans                                    | 160.08                    | 189.63                    |
| <b>Total for Personnel</b>                                                 | <b>1,162.08</b>           | <b>1,292.11</b>           |
| <b>GRAND TOTAL</b>                                                         | <b>1,395.28</b>           | <b>1,557.05</b>           |



# STATISTICAL DATA

The following pages contain data tables, based on the Tribunal's new requests received during 2016-2017 and files carried over from 2015-2016.

The tables are presented according to various interests and categories:

- Total cases by category and sector
- Total cases by Region
- Hearings by category and sector
- Hearings by Region
- Historical caseload
- Medicals
- Suspensions
- Fines
- Cancellations
- Refusals to issue
- Orders

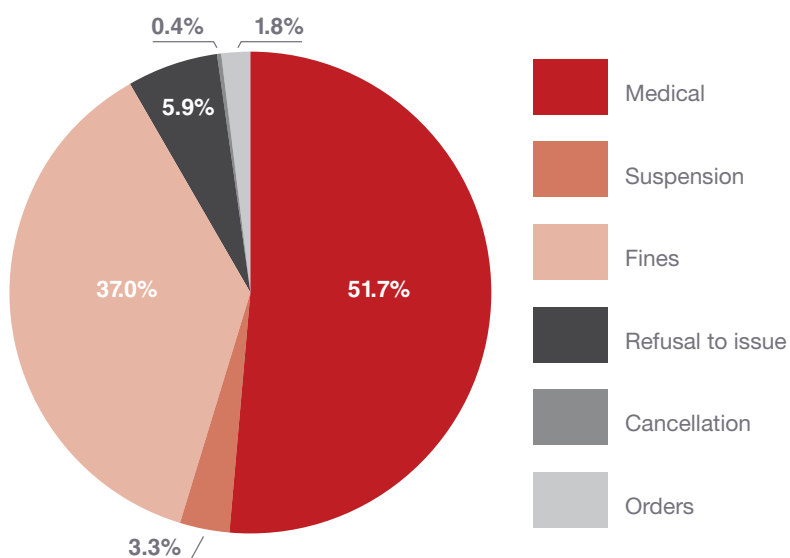


### TOTAL CASES BY CATEGORY AND SECTOR

| CATEGORY<br>SECTOR | Medical    | Suspension | Fines      | Refusal<br>to issue | Cancellation | Orders   | TOTALS     | %          |
|--------------------|------------|------------|------------|---------------------|--------------|----------|------------|------------|
| Aviation           | 80         | 9          | 72         | 16                  | 1            | 0        | 178        | 65.2       |
| Marine             | 61         | 0          | 23         | 0                   | 0            | 0        | 84         | 30.77      |
| Rail               | 0          | 0          | 5          | 0                   | 0            | 5        | 10         | 3.66       |
| CTA*               | 0          | 0          | 1          | 0                   | 0            | 0        | 1          | 0.37       |
| <b>TOTALS</b>      | <b>141</b> | <b>9</b>   | <b>101</b> | <b>16</b>           | <b>1</b>     | <b>5</b> | <b>273</b> | <b>100</b> |

\*CTA = Canadian Transportation Agency

### Case distribution by category



This annual report covers the twelve months between April 1, 2016 and March 31, 2017. In this reporting period, the Tribunal registered **134** new requests for Review and Appeal.

There were **128** new requests for Review (**87** aviation, **35** marine, **5** rail, **1** CTA), and **6** requests for Appeal (**5** aviation and **1** marine). Additionally, **24** requests for certificates were received from the Minister, pursuant to section 7.92 of the *Aeronautics Act*.

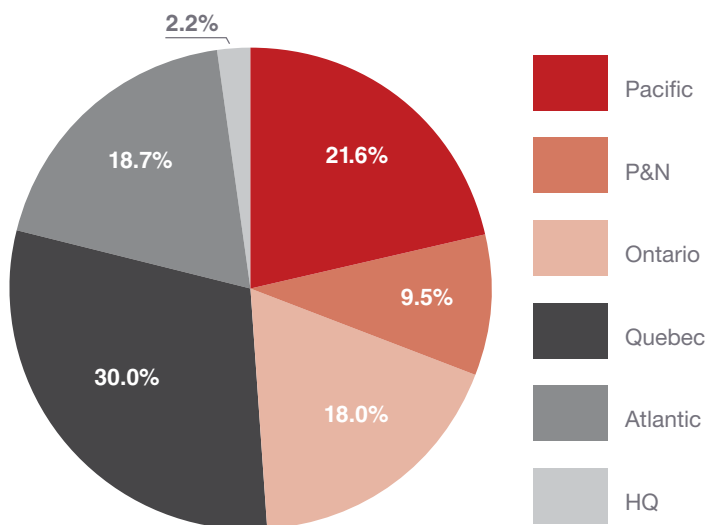
In addition to the new cases registered in this reporting period, **139** cases were carried over from the previous reporting period, bringing the total caseload to **273**. This represents a decrease of **18** cases over the fiscal year 2015-2016.

# STATISTICAL DATA

| TOTAL CASES BY REGION |           |           |           |           |           |          |            |            |
|-----------------------|-----------|-----------|-----------|-----------|-----------|----------|------------|------------|
| CATEGORY<br>SECTOR    | Pacific   | P&N*      | Ontario   | Quebec    | Atlantic  | HQ       | TOTALS     | %          |
| Aviation              | 44        | 19        | 35        | 53        | 21        | 6        | 178        | 65.2       |
| Marine                | 13        | 3         | 12        | 26        | 30        | 0        | 84         | 30.77      |
| Rail                  | 2         | 3         | 2         | 3         | 0         | 0        | 10         | 3.66       |
| CTA                   | 0         | 1         | 0         | 0         | 0         | 0        | 1          | 0.37       |
| <b>TOTALS</b>         | <b>59</b> | <b>26</b> | <b>49</b> | <b>82</b> | <b>51</b> | <b>6</b> | <b>273</b> | <b>100</b> |

\*P&N = Prairie and Northern

Case distribution by region



In each region, the majority of cases are from the aviation sector, followed by the marine sector, with one exception: the majority of cases in the Atlantic region are from the marine sector, followed by the aviation sector. Rail cases were spread throughout the country, with the exception of the Atlantic region where there were no rail cases.

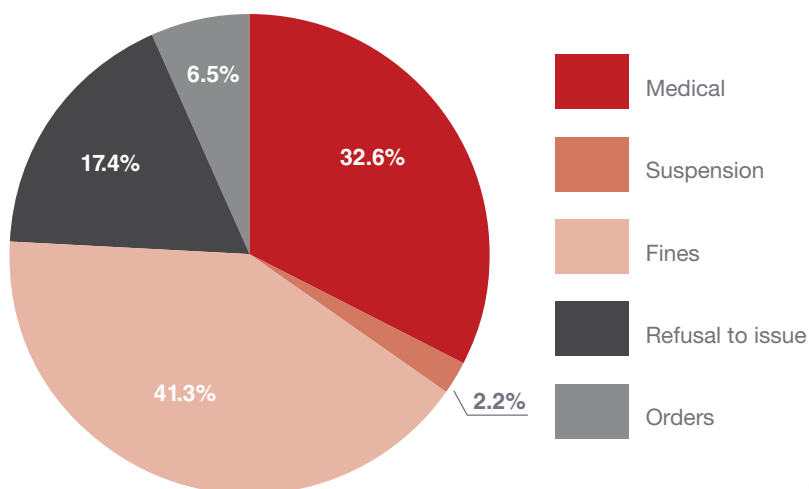




## HEARINGS BY CATEGORY AND SECTOR

|                    | CATEGORY<br>SECTOR | Medical | Suspension | Fines | Refusal<br>to issue | Orders | TOTALS | %    |
|--------------------|--------------------|---------|------------|-------|---------------------|--------|--------|------|
|                    |                    |         |            |       |                     |        |        |      |
| Review<br>Hearings | Aviation           | 9       | 1          | 12    | 8                   | 0      | 30     | 65.2 |
|                    | Marine             | 5       | 0          | 3     | 0                   | 0      | 8      | 17.4 |
|                    | Rail               | 0       | 0          | 2     | 0                   | 3      | 5      | 10.9 |
|                    | Review Sub-total   | 14      | 1          | 17    | 8                   | 3      | 43     | 93.5 |
| Appeal<br>Hearings | Aviation           | 0       | 0          | 2     | 0                   | 0      | 2      | 4.3  |
|                    | Marine             | 1       | 0          | 0     | 0                   | 0      | 1      | 2.2  |
|                    | Appeal Sub-total   | 1       | 0          | 2     | 0                   | 0      | 3      | 6.5  |
|                    | GRAND TOTALS       | 15      | 1          | 19    | 8                   | 3      | 46     | 100  |

## Hearing distribution by category

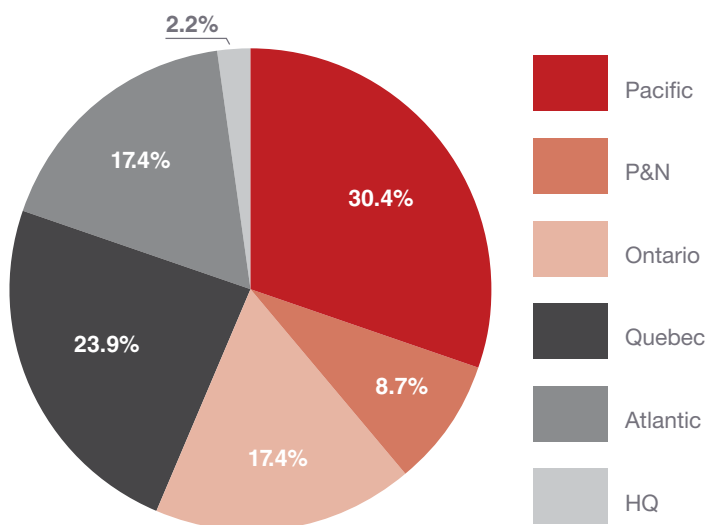


The Tribunal heard **43** Reviews (**30** aviation, **8** marine and **5** rail) and **3** Appeals (**2** aviation and **1** marine) for a total of **64** hearing days. This marks a 70 per cent increase in caseload and a remarkable 88 per cent increase in the number of hearing days, in comparison to last year. At the end of 2016-2017, **96** cases were pending further action, **13** were awaiting decisions and **16** had been scheduled for the 2017-2018 fiscal year.

# STATISTICAL DATA

| HEARINGS BY REGION |                    |         |     |         |        |          |    |        |      |
|--------------------|--------------------|---------|-----|---------|--------|----------|----|--------|------|
|                    | CATEGORY<br>SECTOR | Pacific | P&N | Ontario | Quebec | Atlantic | HQ | TOTALS | %    |
| Review Hearings    | Aviation           | 11      | 2   | 6       | 6      | 5        | 0  | 30     | 65.2 |
|                    | Marine             | 1       | 0   | 0       | 4      | 2        | 1  | 8      | 17.4 |
|                    | Rail               | 1       | 2   | 1       | 1      | 0        | 0  | 5      | 10.9 |
|                    | Review Sub-total   | 13      | 4   | 7       | 11     | 7        | 1  | 43     | 93.5 |
| Appeal Hearings    | Aviation           | 1       | 0   | 1       | 0      | 0        | 0  | 2      | 4.3  |
|                    | Marine             | 0       | 0   | 0       | 0      | 1        | 0  | 1      | 2.2  |
|                    | Appeal Sub-total   | 1       | 0   | 1       | 0      | 1        | 0  | 3      | 6.5  |
|                    | GRAND TOTALS       | 14      | 4   | 8       | 11     | 8        | 1  | 46     | 100  |

Hearing distribution by region



The majority of Review Hearings in each region dealt with matters from the aviation sector. Although the majority of cases in the Atlantic region were from the marine sector, the majority of its Review Hearings pertained to the aviation sector. The Quebec region held the most Review Hearings in the marine sector, despite the Atlantic region having the most marine cases.



# HISTORICAL DATA

## COMPARISON OF CASES WORKED ON IN THE PAST FIVE YEARS

| FISCAL YEAR | PACIFIC | P&N | ONTARIO | QUEBEC | ATLANTIC | HQ*  | TOTALS |
|-------------|---------|-----|---------|--------|----------|------|--------|
| 2016-2017   | 59      | 26  | 49      | 82     | 51       | 6    | 273    |
| 2015-2016   | 28      | 22  | 46      | 73     | 24       | 98*  | 291    |
| 2014-2015   | 29      | 28  | 56      | 67     | 22       | 107* | 309    |
| 2013-2014   | 42      | 56  | 77      | 64     | 31       | 110* | 380    |
| 2012-2013   | 40      | 82  | 68      | 63     | 41       | 100* | 394    |

\*Prior to 2016-2017, all marine medical, rail and some aviation cases were attributed to HQ despite occurring in the different regions. In general, the 2016-2017 report will reflect the actual regions where the cases occurred.

## TOTAL CASELOAD FOR THE PAST FIVE YEARS

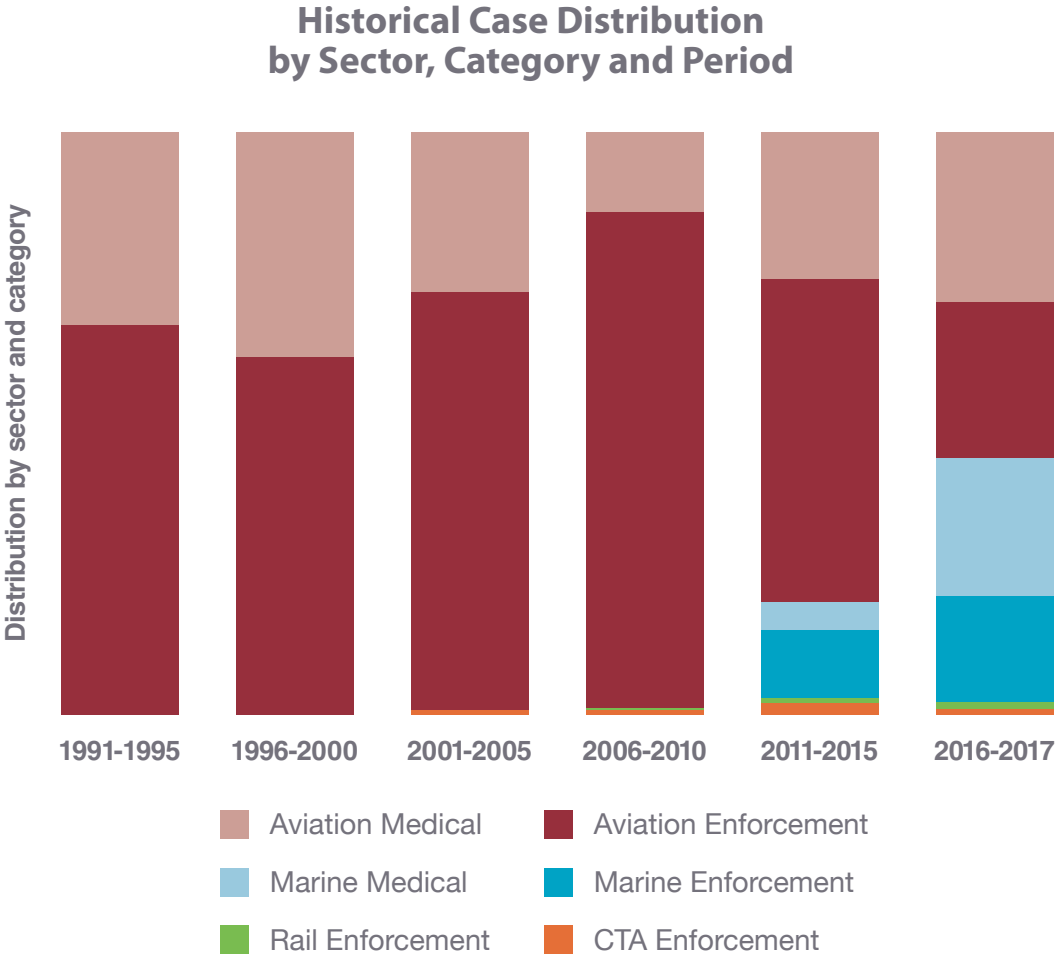
|                           | 2016-2017 | 2015-2016 | 2014-2015 | 2013-2014 | 2012-2013 |
|---------------------------|-----------|-----------|-----------|-----------|-----------|
| New requests              | 134       | 137       | 153       | 136       | 190       |
| Settled without a hearing | 110       | 123       | 125       | 181       | 114       |
| Review Hearings           | 43        | 21        | 30        | 30        | 33        |
| Appeal Hearings           | 3         | 6         | 4         | 2         | 11        |

## TOTAL CASES CONCLUDED WITH A HEARING BY REGION SINCE 1986

| Summary 1986-2017 | PACIFIC | P&N | ONTARIO | QUEBEC | ATLANTIC | HQ  | TOTALS |
|-------------------|---------|-----|---------|--------|----------|-----|--------|
| Total hearings    | 224     | 676 | 368     | 421    | 175      | 102 | 1,966  |
| %                 | 11%     | 35% | 19%     | 21%    | 9%       | 5%  | 100%   |
| Reviews           |         |     |         |        |          |     | 1,596  |
| Appeals           |         |     |         |        |          |     | 377    |



# HISTORICAL DATA



This table shows the evolution of the Tribunal from a unimodal to a multimodal tribunal. In fact, it was only at the beginning of this decade when the Tribunal began to see a significant number of cases from sectors other than aviation. Aviation cases represented 56 per cent of all cases that came before the Tribunal during the 2016-2017 fiscal year and marine cases comprised 42 per cent of cases. Over the last decade, there has been a constant increase in rail cases.



# TRANSPORTATION APPEAL TRIBUNAL OF CANADA ACT

S.C. 2001, c. 29

Assented to 2001-12-18

## AN ACT TO ESTABLISH THE TRANSPORTATION APPEAL TRIBUNAL OF CANADA AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

### SHORT TITLE

#### Short title

1 This Act may be cited as the *Transportation Appeal Tribunal of Canada Act*.

### TRANSPORTATION APPEAL TRIBUNAL OF CANADA

#### Establishment

2 (1) There is hereby established a tribunal to be known as the Transportation Appeal Tribunal of Canada (“the Tribunal”).

#### Jurisdiction generally

(2) The Tribunal has jurisdiction in respect of reviews and appeals as expressly provided for under the *Aeronautics Act*, the *Canada Shipping Act, 2001*, the *Marine Transportation Security Act*, the *Railway Safety Act* and any other federal Act regarding transportation.

#### Jurisdiction in respect of other Acts

(3) The Tribunal also has jurisdiction in respect of reviews and appeals in connection with administrative monetary penalties provided for under sections 177 to 181 of the *Canada Transportation Act*, sections 43 to 55 of the *International Bridges and Tunnels Act*, sections 129.01 to 129.19 of the *Canada Marine Act* and sections 39.1 to 39.26 of the *Navigation Protection Act*.

2001, c. 29, ss. 2, 71;

2007, c. 1, s. 59;

2008, c. 21, s. 65;

2012, c. 31, s. 345.

#### Members

3 (1) The Governor in Council shall appoint as members of the Tribunal persons who, in the opinion of the Governor in Council, collectively have expertise in the transportation sectors in respect of which the federal government has jurisdiction.

## Full- or part-time members

(2) Members may be appointed as full-time or part-time members.

## Chairperson and Vice-Chairperson

4 The Governor in Council shall designate one member as Chairperson of the Tribunal and one member as Vice-Chairperson. The Chairperson and Vice-Chairperson must be full-time members.

## Duties of Chairperson

5 (1) The Chairperson has supervision over, and direction of, the work of the Tribunal, including

(a) the apportionment of work among members and the assignment of members to hear matters brought before the Tribunal and, when the Tribunal sits in panels, the assignment of members to panels and to preside over panels; and

(b) generally, the conduct of the work of the Tribunal and the management of its internal affairs.

## Absence of Chairperson

(2) In the event of the absence or incapacity of the Chairperson or if the office of Chairperson is vacant, the Vice-Chairperson shall act as Chairperson during the continuance of that absence or incapacity or until a new Chairperson is designated.

2001, c. 29, s. 5;  
2014, c. 20, s. 464.

## Term of office

6 (1) A member shall be appointed to hold office during good behaviour for a term not exceeding seven years and may be removed for cause by the Governor in Council.

## Reappointment

(2) A member is eligible to be reappointed.

## Disposition after member ceases to hold office

(3) At the request of the Chairperson, a former member, within eight weeks after ceasing to be a member, may make or take part in a determination or decision on a matter that they heard as a member. For that purpose, the former member is deemed to be a member.

## Remuneration

7 (1) Members shall receive the remuneration that is fixed by the Governor in Council.



## Expenses

- (2) Each member is entitled to be paid reasonable travel and living expenses incurred while absent in the course of their duties from, in the case of a full-time member, their ordinary place of work and, in the case of a part-time member, their ordinary place of residence.

## Status

- (3) Members are deemed to be employed in the federal public administration for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

2001, c. 29, s. 7;

2003, c. 22, s. 224(E).

## Inconsistent interests — full-time members

- 8 (1) Full-time members shall not accept or hold any office, membership, employment or interest, or engage in any business activity, that is inconsistent with the proper performance of their duties and functions.

## Divesting of interests

- (2) If an interest that is prohibited under subsection (1) vests, by whatever means, in a full-time member, the member shall disclose the interest to the Chairperson without delay and, within three months after the interest vests, either divest himself or herself of the interest or resign as a member.

## Duties of full-time members

- (3) Full-time members shall devote the whole of their time to the performance of their duties and functions under this Act.

## Inconsistent interests — part-time members

- (4) If a part-time member who is assigned to hear or is hearing any matter before the Tribunal, either alone or as a member of a panel, holds any pecuniary or other interest that could be inconsistent with the proper performance of their duties and functions in relation to the matter, the member shall disclose the interest to the Chairperson without delay and is ineligible to hear, or to continue to hear, the matter.

## Principal office

- 9 The principal office of the Tribunal shall be in the National Capital Region described in the schedule to the *National Capital Act*.

10 [Repealed, 2014, c. 20, s. 465]

## Sittings

- 11 The Tribunal shall sit at those times and places in Canada that the Chairperson considers necessary for the proper performance of its functions.



## Hearings on review

12 A review shall be heard by a member, sitting alone, who has expertise in the transportation sector to which the review relates. However, a review that concerns a matter of a medical nature shall be heard by a member with medical expertise, whether or not that member has expertise in the transportation sector to which the review relates.

## Hearings on appeal

13 (1) Subject to subsection (2), an appeal to the Tribunal shall be heard by an appeal panel consisting of three members.

## Size of panel

(2) The Chairperson may, if he or she considers it appropriate, direct that an appeal be heard by an appeal panel consisting of more than three members or, with the consent of the parties to the appeal, of one member.

## Composition of panel

(3) A member who conducts a review may not sit on an appeal panel that is established to hear an appeal from his or her determination.

## Qualifications of members

(4) With the exception of the Chairperson and Vice-Chairperson, who may sit on any appeal panel, an appeal shall be heard by an appeal panel consisting of members who have expertise in the transportation sector to which the appeal relates.

## Medical matters

(5) Despite subsection (4), in an appeal that concerns a matter of a medical nature, at least one member of the appeal panel shall have medical expertise, whether or not that member has expertise in the transportation sector to which the appeal relates.

## Decision of panel

(6) A decision of a majority of the members of an appeal panel is a decision of the panel.

## Nature of appeal

14 An appeal shall be on the merits based on the record of the proceedings before the member from whose determination the appeal is taken, but the appeal panel shall allow oral argument and, if it considers it necessary for the purposes of the appeal, shall hear evidence not previously available.

## Nature of hearings

15 (1) Subject to subsection (2), the Tribunal is not bound by any legal or technical rules of evidence in conducting any matter that comes before it, and all such matters shall be dealt with by it as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

## Restriction

- (2) The Tribunal shall not receive or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

## Appearance

- (3) A party to a proceeding before the Tribunal may appear in person or be represented by another person, including legal counsel.

## Private hearings

- (4) Hearings shall be held in public. However, the Tribunal may hold all or any part of a hearing in private if it is of the opinion that
- (a) a public hearing would not be in the public interest;
  - (b) medical information about a person may be disclosed and the desirability of ensuring that, in the interests of that person, the information is not publicly disclosed outweighs the desirability of adhering to the principle that hearings be open to the public; or
  - (c) confidential business information may be disclosed and the desirability of ensuring that the information is not publicly disclosed outweighs the desirability of adhering to the principle that hearings be open to the public.

## Standard of proof

- (5) In any proceeding before the Tribunal, a party that has the burden of proof discharges it by proof on the balance of probabilities.

## Powers of Tribunal

16 The Tribunal, and each of its members, has all the powers of a commissioner under Part I of the *Inquiries Act*.

## Reasons

17 A member who conducts a review shall provide a determination, and an appeal panel shall provide a decision, with reasons, in writing to all parties to a proceeding.

## Rules of Tribunal

18 The Tribunal may, with the approval of the Governor in Council, make rules that are not inconsistent with this Act or any Act referred to in section 2 to govern the management of its affairs and the practice and procedure in connection with matters brought before it.

## Costs

- 19 (1) The Tribunal may award any costs, and may require the reimbursement of any expenses incurred in connection with a hearing, that it considers reasonable if
- (a) it is seized of the matter for reasons that are frivolous or vexatious;
  - (b) a party that files a request for a review or an appeal and does not appear at the hearing does not establish that there was sufficient reason to justify their absence; or
  - (c) a party that is granted an adjournment of the hearing requested the adjournment without adequate notice to the Tribunal.

## Recovery

- (2) Costs awarded to the Minister of Transport, and expenses of that Minister or the Tribunal that are subject to reimbursement, under subsection (1) are a debt due to Her Majesty in right of Canada.

## Certificate

- (3) Costs or expenses under subsection (1) that have not been paid may be certified by the Tribunal.

## Registration of certificate

- (4) On production to the Federal Court, a certificate shall be registered. When it is registered, a certificate has the same force and effect as if it were a judgment obtained in the Federal Court for a debt of the amount specified in it and all reasonable costs and charges attendant on its registration, recoverable in that Court or in any other court of competent jurisdiction.

## Proceedings to be recorded

- 20 Proceedings before the Tribunal shall be recorded, and the record shall show all evidence taken and all determinations, decisions and findings made in respect of the proceedings.

## Decision on appeal final

- 21 A decision of an appeal panel of the Tribunal is final and binding on the parties to the appeal.

## Annual report

- 22 The Tribunal shall, not later than June 30 in each fiscal year, submit to Parliament, through the member of the Queen's Privy Council for Canada who is designated by the Governor in Council as the Minister for the purposes of this section, a report of its activities during the preceding fiscal year, and that Minister shall cause the report to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the Minister receives it.



## TRANSITIONAL PROVISIONS

### Definitions

23 The definitions in this section apply in sections 24 to 32.

**former Tribunal** means the Civil Aviation Tribunal established by subsection 29(1) of the *Aeronautics Act* as that Act read immediately before the coming into force of section 44. (*ancien Tribunal*)

**new Tribunal** means the Transportation Appeal Tribunal of Canada established by subsection 2(1).

### Powers, duties and functions

24 Wherever, in any Act of Parliament, in any instrument made under an Act of Parliament or in any contract, lease, licence or other document, a power, duty or function is vested in or is exercisable by the former Tribunal, the power, duty or function is vested in or is exercisable by the new Tribunal.

### Appropriations

25 Any amount that is appropriated, for the fiscal year in which this section comes into force, by an appropriation Act based on the Estimates for that year for defraying the charges and expenses of the former Tribunal and that, on the day on which section 44 comes into force, is unexpended is deemed, on that day, to be an amount appropriated for defraying the charges and expenses of the new Tribunal.

### Members of Tribunal

26 The Chairman, Vice-Chairman and other members of the former Tribunal immediately before the coming into force of section 44 shall, on the coming into force of that section, occupy the positions of Chairperson, Vice-Chairperson and members, respectively, with the new Tribunal until the expiry of the period of their appointment to the former Tribunal.

### Employment continued

27 (1) Nothing in this Act shall be construed as affecting the status of an employee who, immediately before the coming into force of section 44, occupied a position with the former Tribunal, except that each of those persons shall, on the coming into force of that section, occupy their position with the new Tribunal.

### Definition of *employee*

(2) For the purposes of this section, **employee** has the same meaning as in subsection 2(1) of the *Public Service Employment Act*.

### References

28 Every reference to the former Tribunal in any deed, contract, agreement or other document executed by the former Tribunal in its own name shall, unless the context otherwise requires, be read as a reference to the new Tribunal.

### Rights and obligations

29 All rights and property of the former Tribunal and of Her Majesty in right of Canada that are under the administration and control of the former Tribunal and all obligations of the former Tribunal are transferred to the new Tribunal.

## Commencement of legal proceedings

30 Any action, suit or other legal proceeding in respect of an obligation or liability incurred by the former Tribunal may be brought against the new Tribunal in any court that would have had jurisdiction if the action, suit or other legal proceeding had been brought against the former Tribunal.

## Continuation of legal proceedings

31 Any action, suit or other legal proceeding to which the former Tribunal is a party that is pending in any court immediately before the day on which section 44 comes into force may be continued by or against the new Tribunal in the same manner and to the same extent as it could have been continued by or against the former Tribunal.

## Continuation of proceedings

32 (1) Proceedings relating to any matter before the former Tribunal on the coming into force of section 44, including any matter that is in the course of being heard by the former Tribunal, shall be continued by the new Tribunal.

## Application of provisions

(2) Unless the Governor in Council, by order, directs that proceedings continued under this section are to be dealt with in accordance with the provisions of this Act, the proceedings shall be dealt with and determined in accordance with the provisions of the *Aeronautics Act* as that Act read immediately before the coming into force of section 44.

## Directions re proceedings

(3) The Governor in Council may, by order, direct that proceedings in respect of any class of matter referred to in subsection (1) in respect of which no decision or order is made on the coming into force of section 44 shall be discontinued or continued by the new Tribunal, as the case may be, on the terms and conditions specified in the order for the protection and preservation of the rights and interests of the parties.

## CONSEQUENTIAL AMENDMENTS

33. to 70 [Amendments]

## COORDINATING AMENDMENTS

71. and 72 [Amendments]

## COMING INTO FORCE

### Coming into force

73 The provisions of this Act, other than sections 71 and 72, come into force on a day or days to be fixed by order of the Governor in Council.

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## NOTES

