

TRANSPORTATION APPEAL TRIBUNAL
OF CANADA



TRIBUNAL D'APPEL DES TRANSPORTS
DU CANADA

Master Mariners Presentation

St John's, Newfoundland

Transportation Appeal Tribunal of Canada



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 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 21 part-time Members at the Tribunal.
- » We are actively recruiting for new Members.



Marine Members of the TATC

- » Mr. David G. Henley – **Marine Lawyer**
- » Mr. Michael C. Keefe – **Industry/Government**
- » Mr. Yves Villemaire – **Coast Guard/Captain**
- » Me Caroline Desbiens – **Aviation and Marine Lawyer**
- » Me Danièle Dion – **Marine Lawyer**
- » Mr. Barrie LePitre – **Marine Lawyer**
- » Peter Bernard – **Marine Lawyer**
- » Bradley Caldwell – **Marine Lawyer**
- » Dr. James Wallace – **Physician**
- » Dr. Michel Larose – **Physician**
- » Dr. Trevor Allan Gilmore – **Physician**
- » Dr. Roy Montgomery – **Physician**
- » Dr. Kenneth Corbet – **Physician**
- » Dr. Trevor Jain – **Physician**



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 hearing will normally be located where the alleged infraction occurred, or the nearest practical alternative.

This reduces the cost for witnesses to attend the hearing

- » For **medical cases**, 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 marine community (and other transportation communities) with the opportunity to have the Minister of Transport's enforcement and licensing decisions reviewed by an independent and 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.



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.



The Scope of the TATC's Jurisdiction

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

Canada Shipping Act, 2001

16(4)(a)(b)(c)(e) – refusal to issue a Canadian maritime document (CMD)

16(4)(e) – The Tribunal may confirm the Minister's decision or substitute its own determination.

16(4)(a), (b), (c) – The Tribunal may confirm the Minister's decision or refer the matter back to the Minister for reconsideration.

20(1) – CMD suspension, cancellation or refusal to renew.



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

Canada Shipping Act, 2001 (continued)

20(1)(e), (f)(ii) or (iii) – The Tribunal may confirm the Minister's decision or substitute its own determination.

20(1)(a), (b), (c), (f)(i) – The Tribunal may confirm the Minister's decision or refer the matter back to the Minister for reconsideration.

229(1)(a) – Notice of Violation – The Tribunal may confirm the Minister's decision or substitute its own determination.

231.1 – Notice of Default (when assurance of compliance not complied with) – the Tribunal may confirm the Minister's decision or determine that the person or vessel has complied with the assurance of compliance.



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

Marine Transportation Security Act

19.2(1) – Refusal to designate a person as a screening officer, or the suspension, cancellation or refusal to renew the designation of a person as a screening officer

Tribunal's Options: The Tribunal may confirm the Minister's decision or refer the matter back to the Minister for reconsideration.

19.2(2) – Suspension or cancellation of the designation of a person as a screening officer

Tribunal's Options: The Tribunal may confirm the Minister's decision or substitute its own determination.



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

Marine Transportation Security Act (continued)

19.2(3) – Suspension of the designation of a person or screening officer for an immediate threat to marine transportation security

Tribunal's options: the Tribunal may confirm the Minister's decision or refer the matter back to the Minister for reconsideration

33(1)(b) – Notice of Violation

Tribunal's options: the Tribunal may confirm the Minister's decision or substitute its own determination

36(1) – Notice of Default

Tribunal's options: the Tribunal may confirm the Minister's decision or determine that the person has complied with the assurance of compliance



Key Statutes of the TATC

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



Canadian Maritime Document (CMD)

Canada Shipping Act, 2001

Section 2:

- » **“Canadian maritime document”** means a licence, permit, certificate or other document that is issued by the Minister of Transport under
 - Part 1 (General)
 - Part 3 (Personnel)
 - Part 4 (Safety)
 - Part 9 (Pollution Prevention) or
 - Part 11 (Enforcement),to verify that the person to whom or vessel to which it is issued has met the requirements under that part.



Canada Shipping Act, 2001, *cont'd*

» **Paragraphs 16(4)(a) – 16(4)(c)**

The Minister may refuse to issue a Canadian maritime document if:

- (a) the applicant has not met the requirements for the issuance of the document;
- (b) the applicant has acted fraudulently or improperly or has misrepresented a fact;
- (c) the public interest and the record of the applicant or its principal warrant it.



Canada Shipping Act, 2001 *cont'd*

» **Paragraph and subparagraph 16(4)(e)(i)**

- (e) in the case of a Canadian maritime document applied for under Part 3 (Personnel) by a master or crew member:
 - (i) the person was on board a vessel that contravened the Coastal Fisheries Protection Act and knew that the vessel was committing the contravention.



Canada Shipping Act, 2001 *cont'd*

» **Paragraph and subparagraph 16(4)(e)(i)**

- (e) in the case of a Canadian maritime document applied for under Part 3 (Personnel) by a master or crew member:
 - (ii) the master or crew member has been found guilty of an offence related to their duties on a vessel or has committed a violation in respect of which a notice of violation was issued under paragraph 229(1).



Canada Shipping Act, 2001 *cont'd*

» **Subsection 16.1(1)**

An applicant who receives a notice may file a written request for a review of the decision if:

- (a) the request is in respect of a Canadian maritime document that is issued under Part 3 (Personnel); and
- (b) the grounds for refusing the review are set out in paragraph 16(4)(a), (b), (c) or (e).



Canada Shipping Act, 2001 *cont'd*

» **Subsection 16.1(5)**

The member may:

- (a) in the case of a decision made under paragraph 16(4)(e), **confirm the decision or substitute his or her own determination; or**
- (b) in any other case, **confirm the decision or refer the matter back to the Minister of Transport for reconsideration.**



Canada Shipping Act, 2001 *cont'd*

» **Subsection 20(1)**

The Minister may suspend, cancel or refuse to renew a Canadian maritime document if:

- (a) the requirements for the issuance of the document are no longer met;
- (b) a term or condition attached to the document has been contravened;
- (c) the document was obtained by fraudulent or improper means;
- (d) the holder of the document contravened a provision of this Act or the regulations;
- (e) the master or crew member is incompetent or has committed an act of misconduct.



Canada Shipping Act, 2001 *cont'd*

» **Section 20.1**

The Minister must, before suspending a Canadian maritime document issued under Part 3 (Personnel) **give 30 days notice of the proposed suspension or cancellation**. The notice must:

- (a) **provide all relevant information** concerning the grounds on which the Minister proposes to suspend or cancel the document; and
- (b) **indicate**, in the case of a proposed suspension or cancellation under 20(1)(a), (b), (c), (e) or (f) [**where**] **the applicant may file a request for a review** of the Minister's decision.



Canada Shipping Act, 2001 *cont'd*

» **Subsection 20.4(3)**

The filing of a request for a review in respect of a notice under section 20.1 **operates as a stay of the proposed suspension or cancellation** until the matter is finally disposed of in accordance with this section or section 20.5.



Canada Shipping Act, 2001 *cont'd*

» **Subsection 20.4(7)**

The member may:

- (a) in the case of a decision made under 20(1)(e) or 20(1)(f)(ii) or (iii), confirm the Minister's decision or substitute his or her own determination; and
- (b) in any other case, confirm the Minister's decision or refer the matter back to the Minister for reconsideration.



Canada Shipping Act, 2001 *cont'd*

» **Subsection 20.5(1)**

The applicant for (or holder of) a Canadian maritime document may appeal to the Tribunal a determination made under s. 16.1(5) or 20.4(7), and the Minister may appeal to the tribunal a determination made under s. 16.1(5)(a) or 20.4(7)(a).

The time limit for making an appeal is 30 days after the determination.



Canada Shipping Act, 2001 *cont'd*

» **Subsection 20.5(3)**

The appeal panel of the Tribunal assigned to hear the appeal may:

- (a) in the case of a determination made under s. 16.1(5)(a) or 20.4(7)(a), **dismiss the appeal, or allow the appeal and substitute its own decision;** or
- (b) in the case of a determination under s. 16.1(5)(b) or 20.4(7)(b), **dismiss the appeal or refer the matter back to the Minister.**



Canada Shipping Act, 2001 *cont'd*

» **Subsection 229(1)**

If the Minister has **reasonable grounds to believe that a person or vessel has committed a violation**, the Minister may:

- (a) enter into **an assurance of compliance** with the person or vessel; or
- (b) **issue a notice of violation** that names the person or vessel and sets out the penalty the person or vessel is liable to pay.



Canada Shipping Act, 2001 *cont'd*

» **Subsection 232(1)**

A person or vessel served with a notice of violation under s. 229(1)(b) must;

- (a) **pay the amount of the penalty;** or
- (b) within 30 days of having been served or any further time the Tribunal on application allows, **file with the Tribunal a written request for a review** of the facts of the violation or the amount of the penalty.



Canada Shipping Act, 2001 *cont'd*

» **Subsection 232.1(3)**

The **burden is on the Minister to establish that the person or vessel committed the violation referred to in the notice.** The

person is not required, and must not be compelled, to give any evidence or testimony in the matter.



Canada Shipping Act, 2001 *cont'd*

» **Subsection 232.1(4)**

The member may confirm the Minister's decision or, subject to any regulations made under s. 244(h), substitute his or her own determination.



Canada Shipping Act, 2001 *cont'd*

» **Subsection 232.2(1)**

The Minister or the person who, or vessel that, requested the review may, within 30 days after the determination, **appeal a determination** made under subsection 231.2(6) or 232.1(4) to the Tribunal.



Canada Shipping Act, 2001 *cont'd*

» **Section 237**

Every rule and principle of the common law that renders any circumstance a justification or an excuse in relation to a charge for an offence under a relevant provision applies in respect of a violation to the extent that it is not inconsistent with this Act.



Marine Transportation Security Act

» **Section 19.1**

The Minister may designate persons or classes of persons to act as screening officers for the purposes of this Act or any of its provisions.



Marine Transportation Security Act *cont'd*

» **Subsection 19.2(3)**

The Minister may suspend the designation of a person as a screening officer if the Minister is of the opinion that the exercise by the person of the functions of a screening officer constitutes, or is likely to constitute, an immediate threat to marine transportation security.



Marine Transportation Security Act *cont'd*

» **Subsection 19.5(4)**

The member may:

- (a) in the case of a decision made under subsections 19.2(1) or (3), **confirm the decision or refer the matter back to the Minister for reconsideration;**
- (b) in the case of a decision made under subsection 19.2(2), **confirm the decision or substitute his or her own determination.**



Administrative Monetary Penalties Regulations

- » Under the *Canada Shipping Act, 2001* tools such as **administrative monetary penalties (AMPs)** and **assurances of compliance (AOC)** agreements were introduced address contraventions administratively instead of addressing them through the criminal court system.
- » These administrative enforcement tools were introduced when the ***Administrative Monetary Penalties Regulations*** came into force on April 3, 2008 ("*Regulations*").



Administrative Monetary Penalties Regulations *cont'd*

- » The *Regulations* set monetary penalties for the contravention of designated provisions of the *Canada Shipping Act, 2001 (CSA, 2001)* and identify the provisions for which a separate penalty may be imposed for each day that a violation continues.
- » The *Regulations* also provide methods for serving notices related to AMPs on individuals, corporations and vessels.



Administrative Monetary Penalties Regulations *cont'd*

- » For each of the designated provisions of the *CSA 2001*, the Schedule sets out an applicable **penalty range**.
- » The AMPRs provide for a range of penalties available under a section, rather than a fixed amount
- » Providing a range of penalties allows discretion so that the penalty imposed is appropriate on the circumstances of the case.
- » In determining a penalty, any mitigating or aggravating factors (such as the offender's record of compliance or any consequences of the violation) may be considered.



Administrative Monetary Penalties Regulations *cont'd*

- » Penalty ranges were developed by assessing the **seriousness of each violation as low, medium or high**, depending on the subject matter of the designated provision and the possible consequences of non-compliance with it.
- » Within each category, the minimum amount for a first violation, the average amount for a second violation and the maximum amount for a third or subsequent violation was set.
- » This was done for both individuals and vessels/corporations
- » As a matter of general policy, **vessels and corporations are subject to higher penalties than individuals.**



Administrative Monetary Penalties Regulations *cont'd*

» **Penalty Ranges**

GRAVITY

A – 1st Violation Individual/Vessel or Corporation

B – 2nd Violation Individual/Vessel or Corporation

C – Subsequent Violation Individual/Vessel or Corporation

» **Low**

A – \$250 to \$1,000

B – \$500 to \$2,000

C – \$1,000 to \$5,000

» **Medium**

A – \$600 to \$3,000

B – \$1,200 to \$6,000

C – \$2,400 to \$12,000

» **High**

A – \$1,250 to \$6,000

B – \$2,500 to \$12,000

C – \$5,000 to \$25,000



Administrative Monetary Penalties Regulations *cont'd*

- » The table ranges from the minimum amount that an individual pays for a first violation to the maximum amount that a vessel/corporation pays for a third or subsequent violation.
- » The appropriate penalty is determined by the Minister according to Transport Canada's policies and guidelines.
- » If the penalty is not paid, it becomes a debt due to Her Majesty.



Marine Transportation Security Regulations

- » The *Marine Transportation Security Act (MTSA)* was amended in 2001 to include sections 32 to 51, which introduced both assurances of compliance (AOCs) and administrative monetary penalties (AMPs) to the MTSA compliance and enforcement scheme.
- » Section 32 of the MTSA requires that the provisions of the legislation subject to the new AMP scheme be designated in the *Marine Transportation Security Regulations (MTSRs)*.
- » Contraventions of the designated provisions are called “violations” under the MTSA.



Marine Transportation Security Regulations *cont'd*

- » Subsections 601(1) and 601(2) of the MTSRs address violations of the MTSA provisions:

601. (1) The contravention of a provision of the Act set out in column 1 of an item of Schedule 2 is designated a violation that may be proceeded with in accordance with sections 33 to 46, 49 and 50 of the Act.



Marine Transportation Security Regulations *cont'd*

- » Subsections 601(1) and 601(2) of the MTSRs address violations of the MTSA provisions.

601(2) For each violation designated under subsection (1)

(a) the penalty or range of penalties for

- (i) an individual is set out in column 2, and
- (ii) a corporation is set out in column 3; and

(b) if an “X” appears in column 4, the violation constitutes a separate violation for each day on which it is continued.



Marine Transportation Security Regulations *cont'd*

- » Penalty ranges vary from \$250 to \$5 000 for an individual and from \$1 000 to \$25 000 for a corporation.
- » For a complete list, see <http://laws.justice.gc.ca/PDF/Regulation/S/SOR-2004-144.pdf> at pages 182 to 211.



Marine Cases Before the TATC

- » The TATC started to hear Marine cases in 2008.
- » To date only one Marine Review Determinations has been appealed: *Canada (Minister of Transport) v. McKeil Ships Ltd, 2011 TATCE 11*. In this case, the appeal was dismissed.



Marine Cases Before the TATC *cont'd*

- » The Minister of Transport's decisions have been upheld by the Review Member on several occasions. For example:
 - 1 – In *Northern Harvest Sea Farms Inc. v. Canada (Minister of Transport)*, 2011 TATCE 2, the Minister proved that the Applicant had violated paragraph 106(2)(a) of the *Canada Shipping Act, 2001* (ensuring that the vessel is inspected for the purpose of obtaining CMDs). The Penalty of \$6,000 was confirmed by the Tribunal.
 - 2 – In *McKeil Ships Ltd. v. Canada (Minister of Transport)*, 2010 TATCE 18, the Tribunal held that The Minister had proven one of the alleged violations, and also found that liability for two of the violations was not disputed. The penalty owed by the Applicant was determined to be \$16,300.



Marine Cases Before the TATC *cont'd*

- » Tribunal Members have also determined that the Minister of Transport did not adequately prove contraventions in several cases, for example:
 - 1 – In the case already noted above *Northern Harvest Sea Farms Inc. v. Canada (Minister of Transport)*, 2011 TATCE 2, the Tribunal found that the Minister had not proven on a balance of probabilities that the Applicant violated section 87 of the *Canada Shipping Act, 2001* (failure to hold a valid certificate). As a result the monetary penalty of \$ 5,000 was dismissed.
 - 2 – In *David Richard Joyce v. Canada (Minister of Transport)*, 2010 TATCE 12, the Tribunal held that the Minister had not proven that the Applicant contravened s. 187 by discharging a prescribed pollutant. As such, the penalty of \$1,250 was dismissed.



Marine Cases Before the TATC *cont'd*

- » In the Review Determination, the Tribunal Member may also decrease the amount of the fine. This has occurred in several instances, including:
 - 1 – In *The Florence M v. Canada (Minister of Transport)*, 2009 TATCE 34, the Applicant was found to have violated section 187 of the CSA, however the penalty was reduced from \$25,000 to \$10,000.

This amount was reduced because: a) the Applicant had reported the spill of the pollutant; b) a lack of long-term harm; c) the payment of clean-up costs; d) the absence of economic benefit; and e) no history of non-compliance.
 - 2 – In British Columbia, paragraph 106(2)(a) of the CSA was violated by the Applicant but the penalty was decreased from \$6,000 to \$1,250.

This amount was decreased because no aggravating factors existed.



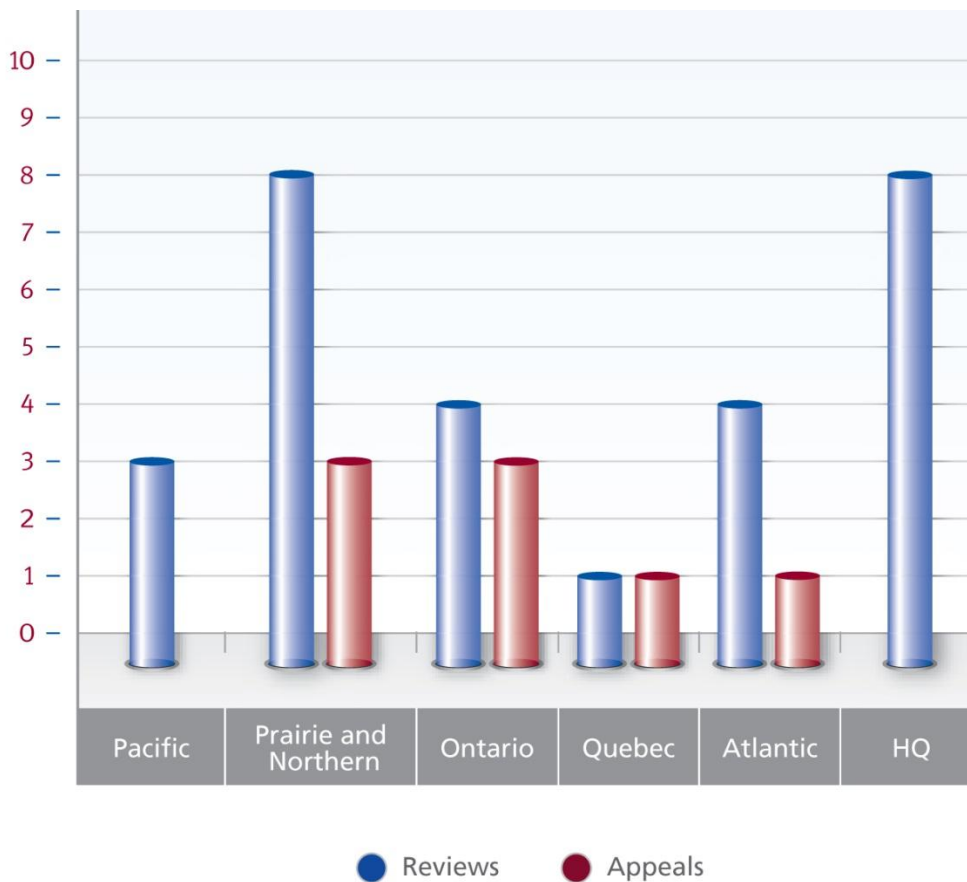
Work Done by the Tribunal in 2009-2010

REVIEWS AND APPEALS CONCLUDED WITH A HEARING

Hearing Level	Pacific	Prairie and Northern	Ontario	Quebec	Atlantic	HQ	TOTALS	%
REVIEWS								
Aviation	3	8	3	1	0	3	28	78
Marine	0	0	1	0	4	5		
APPEALS								
Aviation	0	3	2	1	1	0	8	22
Marine	0	0	1	0	0	0		
TOTALS	3	11	7	2	5	8	36	
%	8	31	19	6	14	22	-	100



Work Done by the Tribunal in 2009-2010 *cont'd*





Contraventions Given by Transport Canada in 2009-2010

TOTAL CASES BY CATEGORY								
Category	Pacific	Prairie and Northern	Ontario	Quebec	Atlantic	HQ	TOTALS	%
MEDICALS								
Aviation	12	13	25	21	5	3	98	33
Marine	0	0	0	0	0	19		
SUSPENSIONS								
Aviation	5	26	5	7	0	6	49	17
FINES								
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		



Contraventions Given by Transport Canada in 2009-2010 *cont'd*

TOTAL CASES BY CATEGORY								
Category	Pacific	Prairie and Northern	Ontario	Quebec	Atlantic	HQ	TOTALS	%
CANCELLATIONS								
Aviation	0	2	1	2	0	0	6	2
Marine	0	0	0	1	0	0		
REFUSALS TO ISSUE								
Aviation	1	4	1	3	0	1	18	6
Marine	0	0	0	0	1	7		
REFUSALS TO REMOVE A NOTATION								
Aviation	0	0	0	0	0	1	1	.5
RAIL ORDERS								
Rail	0	1	0	0	0	0	1	.5
TOTALS	41	83	47	56	20	46	293	-
%	14	28	16	19	7	16	-	100



Challenges of the TATC

- » **Self-Representation** – Like any quasi-judicial tribunal or court, it is difficult for the Tribunal to address the concerns and lack of knowledge of non-represented parties that come before it.
- » **Unpredictability** – At any point up to the day of the Review or Appeal Hearing the parties may resolve the outstanding issues.
- » **Recruitment** – the recruitment of Tribunal staff and part-time Members is, and will likely remain, a significant challenge for the Tribunal



Challenges of the TATC *cont'd*

- » **Expertise** – It is essential that the Member assigned to the file has the appropriate transportation expertise (be it in marine, air, or rail). Having a limited number of part-time Members specialized in a certain area can lead to difficulty in scheduling hearings.
- » **Arranging Hearings** – Review and Appeal Hearings are held from coast to coast to coast. The Tribunal experiences significant challenges associated with weather, facilities, and organizing hearings.
- » **The Future** – A significant number of Review Hearings are anticipated as the Marine industry stakeholders explore and become accustomed to the role of the Tribunal.



Questions?

Please visit the TATC online at

www.tatc.gc.ca



Thank you for your time and attention!

- » It is always my personal and professional pleasure to visit beautiful Newfoundland and to spend time with the wonderful people who inhabit your Province.

Safe travels and calm seas!