Canadian Transportation Agency

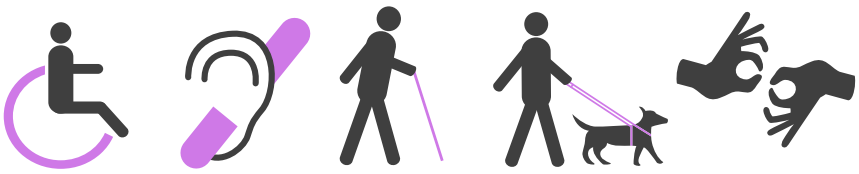
Office des transports du Canada

Accessible Transportation Complaints

A resource tool for service providers

Available in multiple formats

Canada



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

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Table of Contents

Introduction 2
About the Canadian Transportation Agency 2
Accessible transportation mandate 2
Jurisdiction 3

Resolving accessible transportation problems 4
Responsibilities of service providers and passengers 4
What happens if someone files an accessibility complaint? 5
Do I need to hire a lawyer/representative? 5

Options to resolve a complaint 6
Option 1: Facilitation 6
Option 2: Mediation 6
Option 3: Formal adjudication 8

Steps in adjudicating an accessible transportation complaint 9
Step 1. Does the complainant have a disability for the purposes of Part V of the Act? 9
Step 2. Did the complainant encounter an obstacle? 13
Step 3. Was the obstacle undue? 16

General information 28
Official languages 28
Confidentiality 28
Privacy 28
Reference information 28
Agency contact information 29

Glossary 30

Introduction

This resource tool provides information on how to resolve a complaint from a person with a disability who believes they have encountered an undue obstacle with respect to your services. It explains the approaches the Agency uses in resolving accessible transportation complaints, and what is expected from you in responding to such a complaint.

Throughout this publication, key terms have been underlined for quick reference in the Glossary at the end.

About the Canadian Transportation Agency

The **Canadian Transportation Agency** is an independent, quasi-judicial tribunal and economic regulator of the Government of Canada. The Agency makes decisions on a wide range of matters involving air, rail and marine modes of transportation under the authority of Parliament. For certain accessibility matters, the Agency also has jurisdiction over extra-provincial bus transportation.

Accessible transportation mandate

Part V of the ***Canada Transportation Act*** provides the Agency with a human rights mandate to eliminate undue obstacles to the mobility of persons with disabilities in the federal transportation network to ensure that persons with disabilities have equal access to transportation services.

In exercising its human rights mandate, the Agency applies the fundamental principle of equality and balances the right of persons with disabilities to be provided with services that meet their disability-related needs with the service provider's operational, commercial and regulatory responsibilities.

The Agency eliminates undue obstacles in three ways:

1. by developing, and monitoring compliance with, regulations, codes of practice and standards concerning the level of accessibility in modes of transportation under federal jurisdiction (see the **Reference information section**);
2. by eliminating problems *before* they occur by responding to pre-travel inquiries and by educating persons with disabilities and service providers regarding their rights and responsibilities; and
3. by resolving complaints on a case-by-case basis using an approach that is consistent with that used for identifying and remedying discrimination under human rights law.

Jurisdiction

The Agency's responsibility to resolve accessible transportation problems is limited to circumstances where the problem encountered:

1. relates to a person's disability; and
2. occurred in the federal transportation network.

The Agency's jurisdiction applies to:

- air carriers operating within, to, or from Canada;
- airports located in Canada;
- passenger rail carriers, ferry operators, and bus operators providing services between provinces and/or between Canada and the United States, and their stations or terminals located in Canada; and
- services that are integral to the transportation services provided by a carrier or terminal located in Canada.

Resolving accessible transportation problems

Responsibilities of service providers and passengers

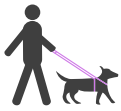
With respect to persons with disabilities travelling within the federal transportation network, service providers have the responsibility to:

- ensure that persons with disabilities have equal access to federal transportation services;
- accommodate persons with disabilities, up to the point of undue hardship;
- provide accommodation in a manner that respects the dignity of persons with disabilities; and
- provide accommodation which considers persons' unique disability-related needs.

Persons with disabilities who require accommodation are expected to:

- make their disability-related needs known to you;
- give you adequate notice of their disability-related needs;
- provide a reasonable opportunity for you to provide the required accommodation (for example, persons with disabilities may have to arrive at a terminal earlier in order to allow time for assistance with boarding, and may be required to wait for deboarding assistance); and
- take necessary measures to mitigate accessibility issues as they do in their daily living.

The best way to ensure that a person's disability-related needs are understood is by communicating with them. However, the Agency recognizes that problems may still arise.



What happens if someone files an accessibility complaint?

Before filing a complaint with the Agency, a person with a disability must contact their transportation service provider and allow them 30 days to respond. In such situations, often a discussion is all that is required to resolve a dispute or address concerns.

If the person with a disability is still not satisfied, they may file a complaint with the Agency.

A complaint will include the required information specified on the Agency's **disability-related complaint form,** which is available on the Agency's website.[1]

Once the Agency receives a complaint, Agency staff will contact you to discuss options for resolving the complaint.

Do I need to hire a lawyer/representative?

Although you are not required to be represented by a lawyer, you may, of course, hire or consult a lawyer if you wish. You may also choose to be represented by an authorized officer of your company.

[1] https://forms.cta-otc.gc.ca/pld-drc/form_eng.cfm

Options to resolve a complaint

The Agency offers a number of dispute resolution options, ranging from informal (facilitation and mediation) to formal (adjudication). These options are discussed below.

Option 1: Facilitation

Facilitation involves an Agency employee having informal discussions with you and the service provider separately (or together, if desired), with the goal of developing your own solutions to the issues in dispute. Agency employees have extensive knowledge of accessible transportation issues. They can offer their expertise and help to define the issues involved, which may clear the way for a solution.

Once both parties agree to facilitation, the Agency Facilitator will begin discussions with each party, usually by telephone or e-mail. The Facilitator will share information, with the consent of the parties, to ensure that each is fully aware of the other's position. The Facilitator will inform the parties of the relevant legislation, regulations and applicable guidelines, and may refer to previous Agency decisions which dealt with similar issues.

The facilitation process addresses concerns parties may have regarding the sensitivity of documents or information exchanged during a facilitation.

In order to assist the parties in reaching a solution, Agency employees strive to resolve matters through facilitation within 30 calendar days.

If this process results in a mutually satisfactory solution, the file will be closed. However, if facilitation is not successful, or only partially successful, you may choose to request mediation or formal adjudication.

Option 2: Mediation

Mediation is an informal and collaborative process in which an Agency-appointed mediator works with you and the service provider to try to reach a solution.

The main difference between facilitation and mediation is that mediation involves direct interaction between the parties, via face-to-face discussions or conference calls, whereas in facilitation, the Facilitator usually communicates with each party separately.

Similar to a Facilitator, a Mediator is impartial and will assist the parties in prioritizing and addressing all issues to be mediated and in reaching a settlement.

A matter that is referred to mediation must be completed within 30 calendar days, although this deadline may be extended if all parties agree.

Regardless of the outcome of the mediation, all matters relating to the mediation remain confidential – unless the parties agree otherwise. This allows you and the service provider to express your views openly and helps to develop an honest and trusting relationship.

Either party may request to have a dispute settled through mediation by submitting a **request for mediation form**. The Agency will then contact the other party to determine whether they are willing to have the dispute resolved through mediation.

If you initiate the request, you should include a brief outline of the dispute, identify the issue(s) and provide relevant supporting documents. This information should also be sent to the complainant.

One, or in some cases two, Agency employees who are qualified Mediators and experienced in the transportation industry and accessible transportation matters will be appointed to your case.

The Mediator will contact you to discuss the **Mediation Ground Rules**, the process for exchanging information, the time and location of the mediation, as well as any other relevant matters.

During the mediation sessions, the parties will attempt to reach an agreement on the facts and issues and will explore options for resolving areas of disagreement. The parties themselves will decide on the solution; the Mediator is there only to guide the discussion.

Once an agreement is reached, the parties are responsible for drafting and signing a settlement agreement. Mediators will not provide advice on the legal implications of the agreement. Any full or partial settlement that is agreed upon by both parties through mediation and filed with the Agency is enforceable as if it were an order of the Agency.

If no settlement or only a partial settlement is reached, any remaining issues may be addressed by the Agency through the formal adjudication; the Mediator will not participate in this process. The discussions held, as well as any documents, including reports and notes, created during the mediation process remain confidential and cannot be disclosed in the formal adjudicative process.

To learn more about mediation, please visit the Agency's website where you will find specific resource tools and information on the Agency's mediation processes.

Option 3: Formal adjudication

In the Agency's formal adjudication process, a panel consisting of at least two Agency Members is appointed to consider your complaint. The panel reaches its decision through a process similar to that of a court.

During this process, each party is given an opportunity to present its case to the panel by public proceedings which result in the issuance of a public decision (see the sections on **Confidentiality** and **Privacy**). The Agency may impose corrective measures to eliminate undue obstacles and order the reimbursement of related expenses but the Agency does not have the power to award compensation for pain, suffering or loss of enjoyment (see the section on **Corrective measures**).

Once the Agency receives a complete complaint, it will identify the issue(s) to be decided and set a timeline for you, the service provider, to file your answer and for the complainant to reply.

In rendering a decision, the panel members will assess the evidence in light of the legislation and any applicable regulations and legal principles. For less complex cases, the Agency strives to issue its decision within 120 calendar days after the filing of a complete complaint. For more complex cases, additional time may be required and in such instances, the Agency's objective is to issue its decision within 90 calendar days after all of the requested information is filed and the exchange of pleadings has ended.

Most cases are settled through written arguments; however, public hearings may be held for cases that are more complex, have a public interest element, or require expert evidence.

Steps in adjudicating an accessible transportation complaint

The Agency's process for resolving complaints through formal adjudication involves the following steps:

Step 1. First, the burden of proof is on the complainant to establish that they are a person with a disability for the purposes of the Act;

Step 2. Second, the burden of proof is on the complainant to establish that they have encountered an "obstacle." To demonstrate this, they must show that they needed, and were not provided with, accommodation. The source of the obstacle may be a rule, policy, practice, physical barrier, etc. that has the effect of denying a person with a disability equal access to services available to others in the federal transportation network.

Step 3. Third and lastly, the Agency must determine whether the obstacle is an "undue obstacle" and, if so, whether corrective measures are required. At this stage, the burden of proof shifts to the service provider to establish that the person's disability-related needs cannot be accommodated without incurring undue hardship. An obstacle will not be undue if you can justify its existence.

Step 1. Does the complainant have a disability for the purposes of Part V of the Act?

In accordance with the World Health Organization's (WHO) publication *International Classification of Functioning, Disability and Health* (ICF), the Agency views a disability as comprising three dimensions: impairment, activity limitation and participation restriction. The Agency's decision precedents require that all three dimensions must be established in order for a disability to exist for the purposes of Part V of the Act.

Decision No. 4-AT-A-2010 (paras. 28-46) provides an example of how the Agency considers the disability dimensions of impairment, activity limitation and participation restriction.

Impairment

The ICF defines impairment as a loss or abnormality of a body part (i.e., structure) or the loss or deviation in body function (i.e., physiological function). The existence of an impairment may be temporary or permanent.

To determine whether a person's health condition qualifies as an impairment, the Agency uses the ICF, other related WHO publications such as the *International Classification of Diseases and Related Health Problems*, and/or medical documentation.

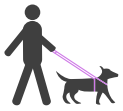
Activity limitation

Activity limitation, as defined in the ICF, is a difficulty an individual experiences while executing activities. The activity limitation associated with an impairment therefore relates to the presence of symptoms and resulting difficulties, irrespective of context.

The ICF states that an activity limitation may range from a slight to a severe deviation in terms of quality or quantity in executing an activity in a manner, or to the extent, that is expected of people without the impairment.

An activity limitation does not need to fall at the extreme end of this spectrum, although for the purposes of the Agency's determination of disability, the activity limitation must be significant enough to result in an inherent difficulty in executing a task or action. For example, in the case of an allergy (the impairment), symptoms such as "sniffles" would be something at the lower end of the spectrum while other symptoms such as asthma may fall somewhere between the middle and the most severe end of the spectrum.

Participation restriction



The ICF defines participation restriction as a problem an individual may experience in involvement in life situations.

Unlike an activity limitation, a participation restriction depends on the context – in this case, the federal transportation network. The Agency therefore determines the existence of a participation restriction by comparing the individual's access to the federal transportation network with that of an individual without the related activity limitation.

A person's impairment and related activity limitation may result in a participation restriction in some contexts. However, this does not mean that the person will necessarily experience a participation restriction in using the federal transportation network. For example, a person with a heart condition may experience a participation restriction in terms of being part of a sports team, but they may not necessarily experience a participation restriction while traveling.

Burden of proof

It is the complainant's responsibility to provide sufficiently persuasive evidence to establish the existence of a disability in terms of impairment, activity limitation and participation restriction.

The standard which applies to this burden of proof is the balance of probabilities.

Evidence required

The extent and nature of the evidence which must be produced to meet a person's burden of proof will vary from case to case. When the impairment, activity limitation and participation restriction experienced by a person are obvious, a common sense approach and the person's own account of their condition will be sufficient to establish that the individual is a person with a disability for the purposes of Part V of the Act (e.g., a person who is paraplegic).

In some cases, a person's own assessment of their disability may not suffice and supporting evidence may be required. In cases where a person's disability is not obvious or when there is a spectrum for the activity limitation that ranges from mild to severe (e.g., an allergic reaction), evidence from a qualified health care professional and/or an opinion from an informed expert, or other evidence, may be required.

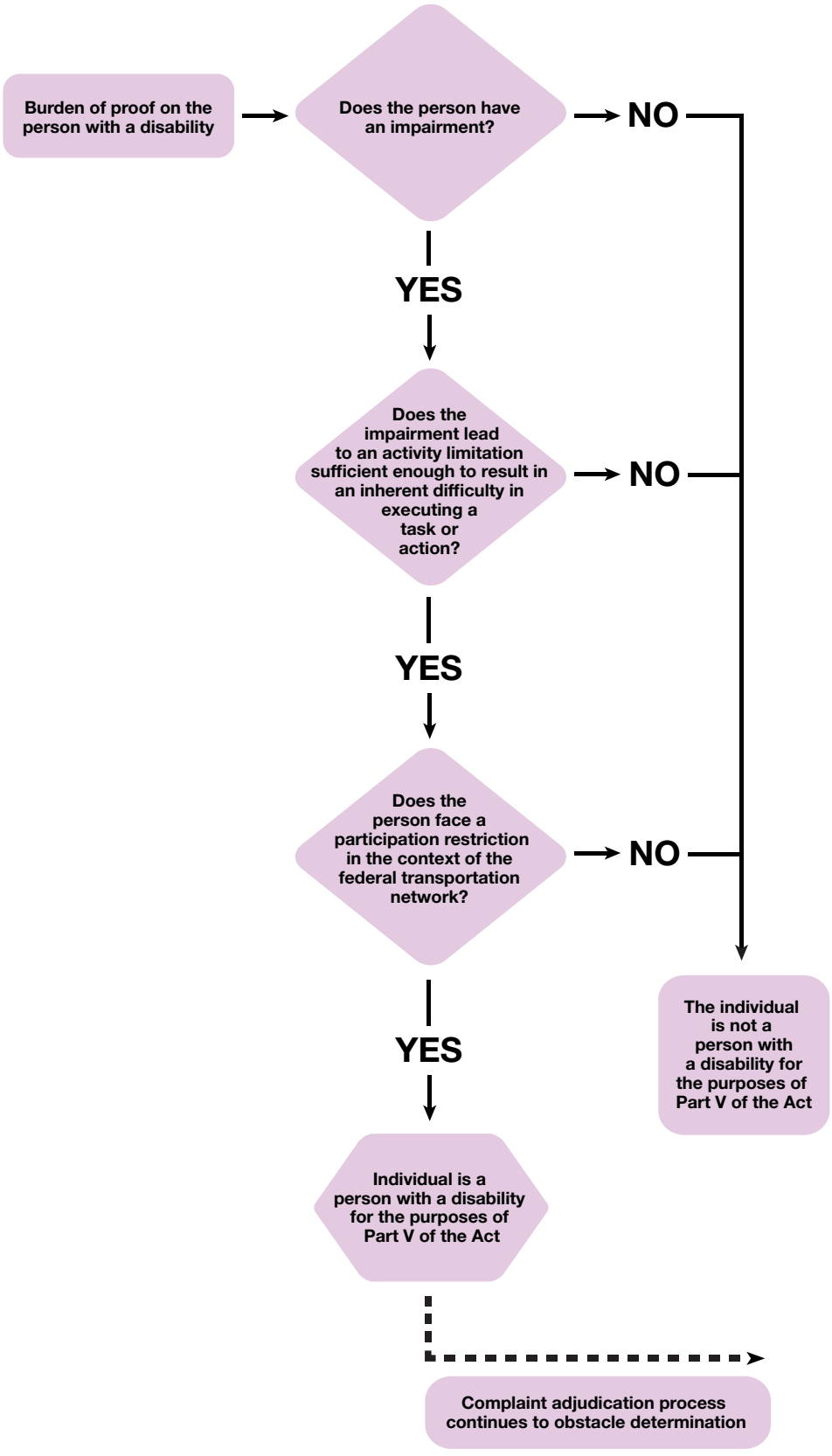
If the Agency requires evidence from the person with a disability's physician/medical health professional, they will be asked to submit a **disability assessment form**.[2] You may challenge any evidence and, in such instances, the panel of Agency Members will determine whether the evidence, including that which you may have filed in opposition, establishes the existence of a disability.

Decision Nos. 4-AT-A-2010 (paras. 28-46) and 685-AT-A-2005 (paras. 50-52) provide examples of the evidence required to establish the existence of a disability.

Decision Nos. 370-AT-A-2009 (paras. 36-51) and 366-AT-A-2010 (paras. 18-28) provide examples of cases in which the applicant did not produce enough evidence to establish the existence of a disability. The applications were therefore dismissed.

[2] http://www.otc-cta.gc.ca/sites/all/files/was/disability-assessment-form.pdf

The Agency's process for making disability determinations



Step 2. Did the complainant encounter an obstacle?

The Agency views an obstacle in the federal transportation network as being a rule, policy, practice, physical barrier, etc. which is either:

- direct, i.e., applies to a person with a disability; OR
- indirect, i.e., while the same for everyone, has the result of withholding a benefit from a person with a disability; AND
- denies a person with a disability equal access to services that are available to others such that accommodation is required from the service provider.

The Agency has the power to investigate and eliminate undue obstacles to the mobility of persons with disabilities, including instances where an incident has not yet occurred but the removal of a potential obstacle could eliminate its future occurrence. For example, the Agency has jurisdiction to make accessibility determinations regarding equipment in the design stage.

For an obstacle to exist, the problem must be related to the person's disability such that, for example, a customer service issue does not become an obstacle merely because it is experienced by a person with a disability.

Decision No. 120-AT-MV-2011 provides an example of a case where the Agency determined that the alleged obstacle was not related to a person's disability and, as a result, no obstacle existed.

You have a duty to accommodate persons with disabilities. A person with a disability will face an obstacle to their mobility if they demonstrate that they need—and were not provided with—accommodation, thereby being denied equal access to services available to others in the federal transportation network.

When determining if an obstacle to the mobility of a person with a disability exists, the Agency is, in essence, establishing whether their disability-related needs were met.

A service or measure that is required to meet a person's disability-related needs is referred to as "appropriate accommodation." If it is determined that the person was provided with appropriate accommodation, it cannot be said that they have encountered an obstacle.

There are situations where a variety of accommodation measures may meet a person's disability-related needs. The accommodation measure doesn't have to be exactly what the person requests, but it must be effective.

You will meet their duty to accommodate if the accommodation that is provided results in an equal opportunity for the person with a disability to benefit from the same level of transportation services afforded to others.

Decision No. 4-AT-A-2010 provides an example of a case where the Agency made a determination of appropriate accommodation that was not the applicants' preferred form of accommodation.

Decision No. 222-AT-A-2008 provides an example of how the Agency determined that the accommodation sought by the applicant went beyond the transportation service provider's duty to accommodate.

A transportation service provider is entitled to choose the least costly, disruptive or burdensome means of accommodation when it is equally responsive to the person's disability-related needs.

However, in situations where different means of accommodation are equally responsive and are neither less costly, disruptive or burdensome for the service provider, the person with a disability should be entitled to choose their preferred means of accommodation.

During this step, the Agency does not consider your ability to provide the appropriate accommodation. Any constraints which may affect the service provider's ability to provide a service or measure will only be assessed at step 3 (see below).

Burden of proof

It is the responsibility of the complainant to provide sufficiently persuasive evidence to establish a need for accommodation and to prove that this need was not met. The standard of evidence which applies to this burden of proof is the balance of probabilities.

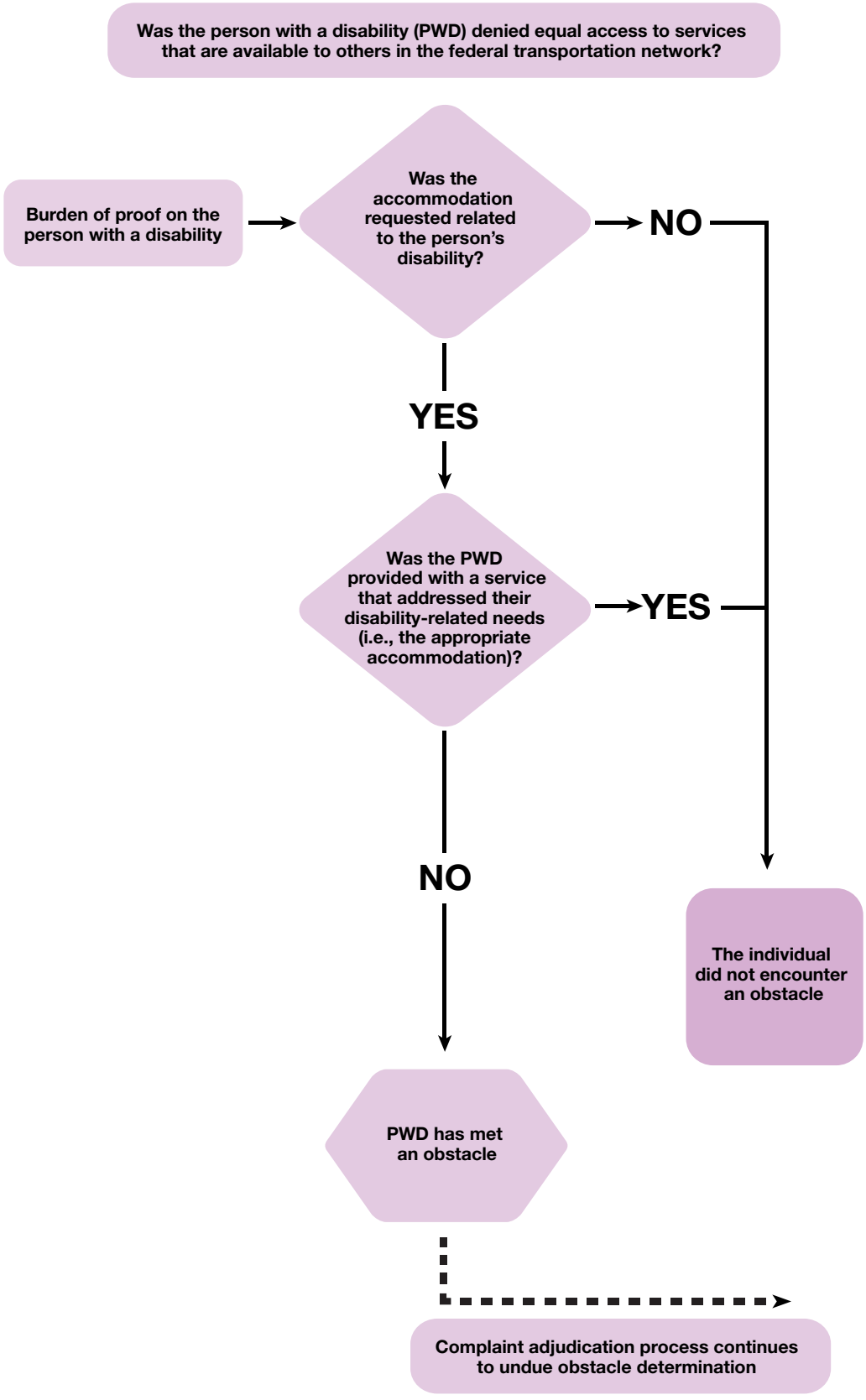
Evidence required

In its determination, the Agency will consider all relevant evidence regarding your disability, your disability-related needs, and the service/measure to be provided.

It is important to know that the responsibility for establishing a need for accommodation lies with the complainant. However, it is the service provider, as part of its duty to accommodate, who is responsible for identifying and providing the service/measure that will be required to meet your needs.

In some cases, the required service/measure is obvious. For example, a person with quadriplegia will necessarily require transfer assistance to travel by air. In other cases, however, additional evidence may be required to identify the specific service/measure such as when it involves issues outside the Agency's specialized knowledge and expertise.

The Agency's process in making an obstacle determination



Step 3. Was the obstacle undue?

An obstacle is undue unless you can justify its existence. Once the Agency has determined that a person with a disability has encountered an obstacle, you may either:

- accept to provide the appropriate accommodation or offer an alternative that is equally responsive in meeting the disability-related needs of the person. In such a case, the Agency will determine what corrective measures are required to ensure that the appropriate accommodation is provided. (See the section on **Corrective measures**). OR
- justify the existence of the obstacle by demonstrating that you can neither provide the appropriate accommodation nor provide any other form of accommodation without incurring undue hardship. The burden of proof is on the service provider to demonstrate that providing the accommodation would result in undue hardship. If you fail to meet this burden, the Agency will order corrective measures to ensure that appropriate accommodation is provided.

Decision No. 336-AT-A-2008 provides an example of a case where a service provider accepted to implement the appropriate accommodation.

Justifying the existence of the obstacle

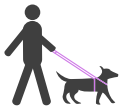
In situations where you are of the view that you cannot provide the accommodation that's responsive to the needs of the person with a disability, you must justify the existence of the obstacle. The test that you must meet in order to justify the existence of an obstacle consists of three elements. you must demonstrate that:

1. the source of the obstacle is rationally connected to the provision of the transportation service;
2. the source of the obstacle was adopted based on an honest and good faith belief that it was necessary in order to provide the transportation service; AND
3. you cannot provide any form of accommodation without incurring undue hardship.

Burden of proof

It is your responsibility as a service provider to provide sufficiently persuasive evidence to establish that the obstacle is justified (i.e., that to provide any form of accommodation would result in undue hardship).

If you meet this burden of proof, the Agency will find that the obstacle is not undue and will not order any corrective measures. The standard of evidence which applies to this burden of proof is the balance of probabilities.



Evidence required

Generally, minimal evidence is necessary to address the first two elements of the test to justify the existence of the obstacle.

However, for the third element of the test, the threshold to establish undue hardship is high, given that the fundamental right of persons with disabilities to have equal access to the federal transportation network is at issue.

To establish undue hardship, you must demonstrate that there are constraints which make the removal of the obstacle either unreasonable, impracticable or impossible, such that to provide any form of accommodation would cause undue hardship. These may include constraints such as those relating to: safety, operational realities, financial and economic implications, and physical or structural limitations.

Mere statements without direct, verifiable, and objective supporting evidence are not sufficient to establish undue hardship. On several occasions, the Supreme Court of Canada has reaffirmed the principle that persons with disabilities cannot be denied equal access, unless concrete evidence of undue hardship is produced by the service provider.

Safety constraints

You may submit that providing any form of accommodation would cause undue hardship due to safety issues.

Transportation service providers are required to comply with various rules and regulations regarding the physical safety of transportation facilities and operations, as well as the safety of the public. Service providers may also implement their own safety policies and procedures.

In some instances, a person with a disability may request that a service provider waive or modify a safety requirement so that they may have equal access to services available to others. In such circumstances, the Agency will:

- apply the human rights principle of the assumption of risk and assess whether the risk to the person with a disability is reasonable; AND
- consider whether the risk extends beyond the person with a disability and involves other individuals, such as other passengers, employees or the public.

Assumption of risk

Where possible, persons with disabilities should be allowed to assume some personal risk, subject to the undue hardship standard.

The Agency will weigh the risk created by modifying or waiving a safety requirement against the right of persons with disabilities to have equal access to the federal transportation network. Having to modify or waive a safety requirement is considered to be undue hardship if the risk is so significant that it outweighs the benefits of equal access.

Decision No. 684-AT-A-2006 (paras. 61-65) provides an example of a case in which the Agency ruled that a service provider was justified in assessing a person with a disability's fitness to travel in a cabin environment.

Risk to others

The Agency will also consider if the risk created by modifying or waiving a safety requirement extends to others. The objective of ensuring safety and reducing risks to others in the federal transportation network is sufficiently important that it may warrant, in some cases, overriding the right to equal access by persons with disabilities.

Safety standards that are adopted for the protection of passengers, employees, and the public will meet the first two elements of the test to justify the existence of an obstacle. However, the third element of this test requires you to demonstrate that the safety standard is reasonably necessary and that accommodation cannot be provided without incurring undue hardship.

Evidence required

You are expected to explain why you cannot provide accommodation by referring to the relevant safety rule, regulation, policy or procedure.

Decision No. 336-AT-A-2008 (para. 94) provides an example of a case in which a service provider submitted that international safety regulations prevented it from providing the accommodation.

You are also expected to provide supporting evidence such as engineering reports, medical reports or expert opinions regarding the safety matters.

Decision No. 175-AT-A-2008 (para. 30) provides an example of a case in which the Agency requested an engineering report to justify an undue hardship submission based on a safety risk.

In assessing the risk to the person with a disability and to others, the Agency will consider the significance or seriousness of the safety hazard to determine whether the risk justifies not accommodating the person with a disability.

To establish the seriousness or significance of a risk, your evidence should address factors such as the:

- nature of the safety hazard – what exactly is the safety hazard and what harm could result from it?
- scope of the safety hazard – who does it affect?
- severity of the safety hazard – if the harm resulting from the safety hazard occurs, how serious would it be?
- type of risk – is the risk one that would normally be tolerated within society as a whole?
- probability of the risk – how likely is it that the safety hazard will occur?

If the potential hazard is minor and/or the probability of its occurrence is low, it will not amount to undue hardship. In contrast, a high probability of substantial harm will constitute undue hardship. However, a risk does not need to fall at the extreme end of this spectrum to constitute undue hardship. The risk must be significant enough that it would be unreasonable to waive or modify the safety requirement.

Decision No. 221-AT-A-2004 (para. 56-61) provides an example of a case in which the Agency found that no evidence was provided that a safety requirement was reasonably necessary to protect the safety of other passengers, and thus the obstacle was not justified.

Decision No. 107-AT-A-2005 (para. 29-33) provides an example of a case in which a service provider justified an obstacle from a safety perspective.

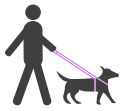
Operational constraints

You may submit that operational constraints prevent you from providing any form of accommodation.

The Agency recognizes that service providers must consider the rights of persons with disabilities within the context of the operational realities that they face, such as security measures which must be adopted and applied, and timetables or schedules that must be adhered to for commercial reasons.

Ultimately, service providers must be able to make operational and commercial decisions, so long as they provide an appropriate level of accommodation.

Decision No. 140-AT-A-2003 provides an example of a case in which the Agency determined that a service provider must be permitted to make internal decisions regarding equipment, provided the equipment chosen to be operated is able to accommodate persons with disabilities up to the point of undue hardship.



Operational constraints are not to be confused with “business inconvenience”. Business inconvenience is not a defense for the duty to accommodate. A service provider must be able to demonstrate that an operational constraint is directly linked to unreasonable burdens on its operational duties, which includes, for example, an inability to adhere to timetables.

There may be situations in which the existence of an obstacle is beyond the service provider’s control. In such situations, the service provider must be able to point to the operational factors which resulted in the obstacle and demonstrate that it would have been either unreasonable, impracticable, or impossible to have foreseen or controlled these factors.

Decision No. 659-AT-A-2001 provides an example of a case in which the Agency ruled that when many demands are being made on a service provider’s personnel during peak times, it is not always possible for them to respond to all requests in as timely a manner as passengers may wish.

Decision No. 630-AT-A-1998, on the other hand, provides an example of a case in which the Agency found that when unusual circumstances result in an extended wait for the unloading of baggage, the unloading of a person’s mobility aid should be considered a priority.

Evidence required

It is not sufficient to state that it would be operationally difficult to provide accommodation.

You must demonstrate how providing the accommodation would be either unreasonable, impracticable or impossible. Supporting evidence such as witness testimony, data or reports on business operations, copies of internal policies, or expert opinions will likely have to be provided to the Agency.

Decision No. 6-AT-A-2008 (paras. 848-860) provides an example of a case in which the Agency found that the service provider’s experts had established that although implementing new operational procedures would be difficult, they were achievable and therefore the obstacle was not justified.

Financial constraints

You may submit that financial constraints prevent you from providing any form of accommodation.

In determining whether the costs of accommodation would result in undue hardship, the Agency will consider financial evidence provided by a service provider and weigh the social and economic benefits of providing accommodation against the financial costs that a service provider would incur to provide it.

As with other constraints, the threshold to establish that costs of providing accommodation would create undue hardship is high. In order to meet your burden of proof, it is not sufficient to demonstrate that the accommodation would cost a given amount. You must also show why this amount has **a significant impact on your business.**

Decision Nos. 175-AT-R-2003, 620-AT-R-2003 and 6-AT-A-2008 (para. 701-713), provide examples of cases in which the Agency considered evidence relating to the costs of proving accommodation.

Costs will amount to undue hardship if they are:

- quantifiable;
- incremental (i.e., new costs);
- attributable to meeting the needs of persons with disabilities; AND
- so significant that the impact would be harmful to the service provider to the point that it would be either unreasonable, impracticable or impossible to provide the accommodation.

You must identify the quantified incremental costs of providing the accommodation. These costs may include:

- capital costs, such as the costs of new or modified equipment or structures;
- operating costs, such as the ongoing costs of labour and materials used in providing the accommodation measure;
- maintenance costs, such as the costs of capital, labour and materials used to maintain the infrastructure and facilities associated with the accommodation; AND
- revenue losses, such as a those experienced from a decrease in demand for the service, if the service provider can quantify the losses and demonstrate that they are directly related to the accommodation.

In assessing the impact of the costs of providing accommodation, consideration may be given to how the costs of the accommodation may be managed or offset, such as by:

- recovering costs;
- generating revenue from new demand for travel by persons with disabilities;
- reducing taxes payable in the future; AND
- obtaining grants, subsidies or loans, such as those from government and non-government sources.

The costs that remain after all benefits, deductions and other factors have been considered (net costs) will be used by the Agency in its analysis of the impact of the costs of providing the accommodation.

Impact of the costs

You must demonstrate that the impact of the costs is sufficiently harmful that it would be unreasonable, impracticable, or impossible for you to provide the accommodation.

Agency precedent decisions indicate that if you demonstrate that the cost of accommodation would threaten the viability of your company or that it would be impossible to absorb the costs associated with accommodation, the cost would almost certainly be found to constitute undue hardship. This is not to say that the threshold for undueness is only reached when costs would threaten the survival or essential character of an enterprise. The threshold for undueness, based on costs within the context of the Agency's accessible transportation mandate, has been considered by the Supreme Court of Canada in ***Council of Canadians with Disabilities v. Via Rail Canada Inc.***[3]

A determination of the impact of the costs of accommodation on a service provider includes a balancing of the cost of accommodation with a service provider's ability to absorb those costs and the impact that the imposition of those costs would have on the service provider.

Decision No. 6-AT-A-2008 (para. 819-829) provides an example of a case where the Agency found that the service provider failed to demonstrate that the impact of providing the accommodation would be harmful to the point that it would unreasonable, impracticable or impossible for it to provide the accommodation.

Other relevant factors that may be considered when assessing the impact of costs include the impact on the service provider's ability to:

- generate profit and shareholder value;
- meet its short-term cash payment obligations;
- service debt and meet debt covenants; and
- undertake important capital expenditures.

Evidence required

You must provide reliable evidence to support the calculation of the costs and the impact of those costs on you, such as: current audited and interim financial statements; current cash flow projections and the underlying assumptions; a detailed business plan; annual reports; and other financial information that is supported by your financial records.

[3] *Council of Canadians with Disabilities v. Via Rail Canada Inc.*, 2007 SCC 15 http://www.lexisnexis.ca/documents/2007scc15.pdf

Economic constraints

You may submit that economic constraints prevent you from providing any form of accommodation.

Your submission may refer to negative economic implications of providing accommodation, such as competitive disadvantages (e.g. disproportionately higher operating costs). These negative economic implications must also be weighed against the positive economic and social benefits for persons with disabilities that would result from providing the accommodation.

Evidence required

Similar to submissions based on financial constraints, it is not sufficient to simply show that the provision of accommodation would have a negative effect on your economic situation.

You must demonstrate that the nature of the economic implications would have a material impact on your business with reference to your economic and competitive environment. It must be established that this impact is sufficiently harmful that it would be either unreasonable, impracticable, or impossible for you to provide the accommodation.

You will likely have to provide supporting evidence similar to that needed to advance an undue hardship argument based on financial constraints.

Decision No. 6-AT-A-2008 (para. 746-747) provides an example of a case in which the Agency found that although the service provider had shown that providing the accommodation would have an economic impact, they failed to specifically demonstrate the material impact on their business.

Physical or structural constraints

You may submit that physical or structural constraints prevent you from providing any form of accommodation.

These constraints may be related to the means of transportation, the related facilities and premises, or the equipment used in them.

If you are submitting that the costs of constructing or modifying equipment or facilities would create undue hardship, the information outlined in the section on **Financial constraints** will apply.

If you submit that physical or structural limitations exist with equipment or facilities, you must demonstrate that it would be either unreasonable, impracticable or impossible to either design, construct, or modify the equipment or facilities in order to remove the obstacle.

Decision No. 620-AT-R-2003 provides an example of a case in which the Agency considered, in depth, the physical and structural constraints involved in modifying equipment in order to remove an obstacle.

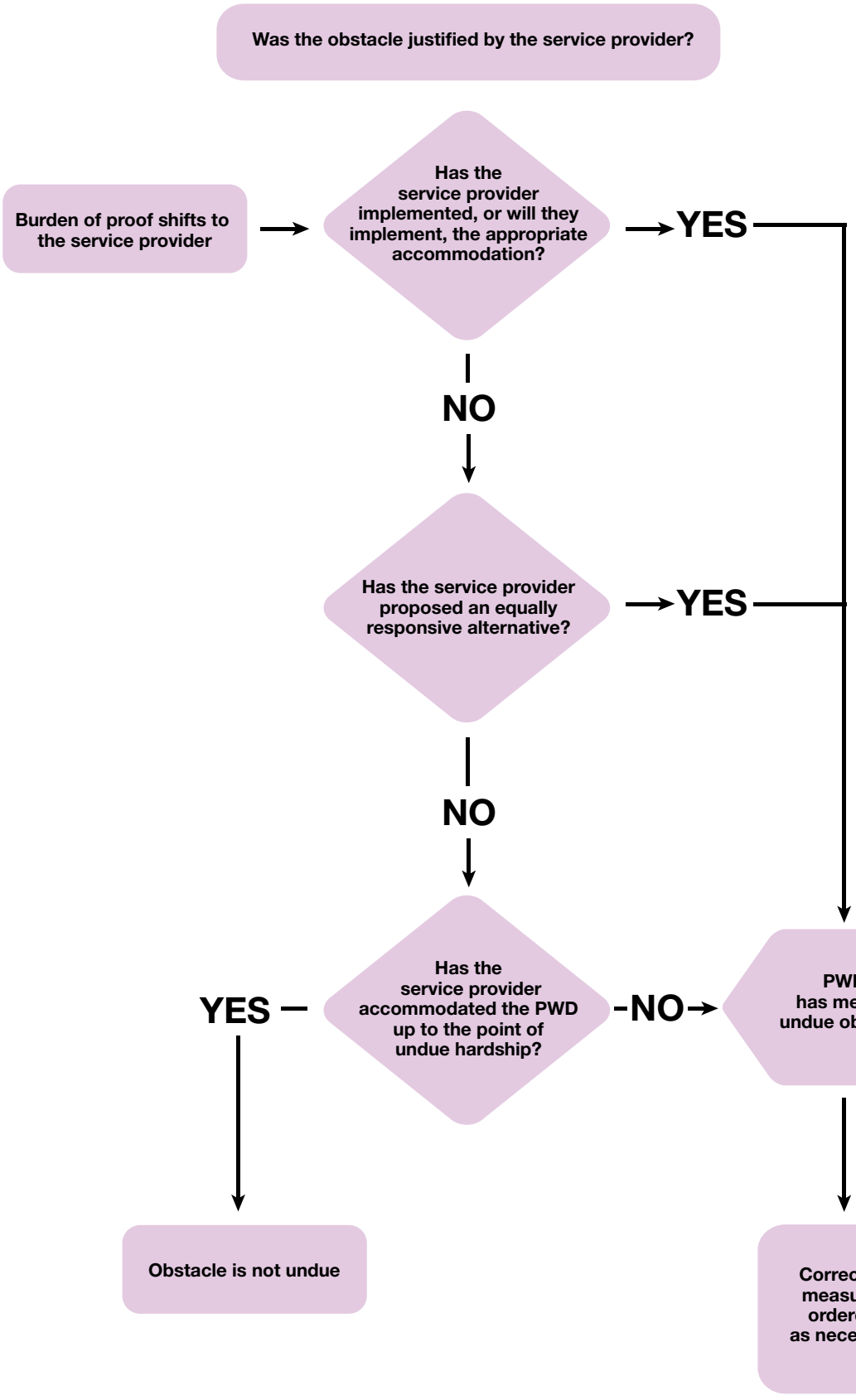
Even if you demonstrate that you cannot, from a structural standpoint, provide the appropriate accommodation without incurring undue hardship, you must also demonstrate that you have exhausted all reasonable means of accommodation and have provided accommodation up to the point of undue hardship.

Decision No. 40-AT-A-2008 (para. 36-46) provides an example of a case in which the Agency found the appropriate accommodation was structurally impossible, but the service provider had not exhausted all reasonable means of accommodation, as it had not carried out due diligence with respect to the "next best accommodation".

Evidence Required

You must provide reliable supporting evidence, which may include engineering reports, witness testimony or expert opinions.

The Agency's process in making an undue obstacle determination



Corrective measures

Should the Agency find that an undue obstacle exists, it has the power to order the service provider to take corrective measures to address it. The Agency may also direct that any expenses resulting from the undue obstacle be reimbursed. However, the Agency cannot order compensation for pain, suffering or loss of enjoyment.

Decision No. 551-AT-A-2008 provides an example of a case where the Agency ordered the reimbursement by a service provider of expenses after an undue obstacle finding.

The Agency may also order corrective measures to address underlying systemic issues. For example, the Agency has required transportation service providers to: amend their tariffs, policies and procedures, develop or amend training programs, train personnel, purchase equipment, provide services, and communicate information.

Decision No. 336-AT-A-2008 provides an example of a case where the Agency ordered the service providers to amend their policies in order to remove undue obstacles to persons with disabilities.

Enforcement of Agency decisions

Agency decisions and orders are enforceable, similar to a ruling of the Federal Court of Canada or a superior court of any province. Further, administrative monetary penalties can be levied against service providers who do not comply with the Agency's decisions or orders.

Award of costs incurred as a result of participating in the adjudication of a complaint

The Agency may award costs in any proceeding before it. As a general rule, costs are awarded only in special or exceptional circumstances.

In making its determination on costs in a given case, the Agency will consider a combination of factors such as the nature of the complaint, the length and complexity of the proceedings, costs associated with participating at an oral hearing, whether parties have not acted efficiently or in good faith, and if a party has incurred extraordinary costs to prepare and/or defend the complaint.

Appeal and review of Agency decisions

Should a party disagree with an Agency decision, there are two options for contesting the decision:

1. Under section 41 of the Act, a party can apply to the Federal Court of Appeal within 30 days of the issuance of an Agency decision for leave to appeal the decision on a question of law or jurisdiction; and
2. Under section 40 of the Act, a party can petition the Governor in Council to vary or rescind any decision made by the Agency.

In addition, under section 32 of the Act, the Agency may review, rescind or vary any decision or order made by it or may re-hear any complaint before deciding it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.

In dealing with an application for review, the Agency must first determine whether there has been a change in facts or circumstances pertaining to the decision. If no such change exists, the decision stands. If, however, the Agency finds that there has been a change in facts or circumstances since the issuance of the decision, it must then determine whether such a change is sufficient to warrant a review, rescission or variance of the decision.

The burden of proof rests on the party requesting the review of the decision to demonstrate to the Agency both aspects: that there has been a change in facts or circumstances since the decision and that the change is of sufficient importance to be expected to result in a variance of the decision.

If a fact was known to the person or discoverable through exercise of due diligence at the time of the initial application, it cannot constitute a change in facts or circumstances.

General information

Official languages

Written information may be submitted to the Agency in either English or French.

Confidentiality

All documents filed with the Agency become part of the public record and may be made available for public viewing. However, in accordance with the Agency's rules of procedure, a **claim for confidentiality** can be made.

Privacy

Decisions are posted on the Agency's website and include the names of the parties involved, as well as witnesses. The decision will also be distributed by e-mail to anyone has subscribed through the Agency's website to receive Agency Decisions.

Reference information

Resolving accessible transportation complaints

Disability-related complaint form[1]

Disability assessment form[2]

Mediation

Request for mediation form[3]

Mediation Ground Rules[4]

Legislation

Canada Transportation Act, specifically Part V[5]

Regulations

Air Transportation Regulations, specifically Part VII[6]

Canadian Transportation Agency General Rules[7]

Personnel Training for the Assistance of Persons with Disabilities Regulations[8]

Codes of Practice

Aircraft Accessibility for Persons with Disabilities
(fixed-wing aircraft with 30 or more passenger seats)[9]

Accessibility of Small Aircraft - Services for persons with disabilities on aircraft with 29 and fewer passenger seats[10]

Ferry Accessibility for Persons with Disabilities[11]

Passenger Rail Car Accessibility and Terms and Conditions of Carriage by Rail of Persons with Disabilities[12]

Passenger Terminal Accessibility[13] and related Guide[14]

Removing Communication Barriers for Travellers with Disabilities[15] and related Guide[16]

Resource Tools

Take Charge of Your Travel: A Guide for Persons with Disabilities[17]

Carriage of Mobility Aids On Board Planes, Trains and Ferries[18]

Agency contact information

Formal complaints and submissions relating to complaints must be sent to the Secretariat of the Canadian Transportation Agency.

By mail

Secretary
Canadian Transportation Agency
Ottawa, Ontario
K1A 0N9

By fax

819-997-6727

By courier

Secretary
Canadian Transportation Agency
15 Eddy Street
17th Floor, Mailroom
Gatineau, Quebec
J8X 4B3

For further information:

Canadian Transportation Agency
Ottawa, Ontario K1A 0N9
Tel: 1-888-222-2592
TTY: 1-800-669-5575
Web: www.cta.gc.ca
E-mail: info@otc-cta.gc.ca

[1]http://www.cta.gc.ca/eng/how-file-accessibility-complaint

[2]http://www.otc-cta.gc.ca/sites/all/files/was/disability-assessment-form.pdf

[3]http://www.cta.gc.ca/eng/mediation-docs

[4]http://www.cta.gc.ca/eng/publication/mediation-ground-rules

[5]http://laws-lois.justice.gc.ca/eng/acts/C-10.4/index.html

[6]http://laws-lois.justice.gc.ca/eng/regulations/SOR-88-58/index.html

[7]http://laws-lois.justice.gc.ca/eng/regulations/SOR-2005-35/index.html

[8]http://laws-lois.justice.gc.ca/eng/regulations/SOR-94-42/index.html

[9]http://www.cta.gc.ca/eng/code-practice-aircraft-accessibility

[10]http://www.cta.gc.ca/eng/accessibility-guidelines-small-aircraft

[11]http://www.cta.gc.ca/eng/publication/ferry-accessibility-persons-disabilities

[12]http://www.cta.gc.ca/eng/publication/passenger-rail-car-accessibility

[13]http://www.cta.gc.ca/eng/publication/passenger-terminal-accessibility

[14]http://www.cta.gc.ca/eng/publication/guide-passenger-terminal-accessibility

[15]http://www.cta.gc.ca/eng/removing-communication-barriers

[16]http://www.cta.gc.ca/eng/guide-removing-communication-barriers-travellers-disabilities

[17]http://www.cta.gc.ca/eng/take-charge

[18]http://www.cta.gc.ca/eng/publication/carriage-mobility-aids-planes-trains-ferries

Glossary

Accommodation

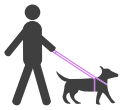
The provision of services, new equipment or facilities, or modifications to a rule, policy, practice, or existing equipment or facilities in order to meet a disability-related need.

Activity limitation

Difficulties an individual experiences while executing activities, which may range from a slight to severe deviation in terms of quality or quantity in executing an activity in a manner or to the extent that is expected of people without the impairment. The activity limitation must be significant enough to result in an inherent difficulty in executing a task or action.

Adequate notice

What constitutes adequate notice of a person's disability-related needs will vary depending on the situation. However, as reflected in Part VII of the *Air Transportation Regulations* and in Agency decisions, 48 hours prior to departure is generally considered to constitute adequate notice.



Adjudication

The legal process of resolving a dispute wherein a formal judgment or decision is given after hearing evidence on the factual and legal issues involved.

Appropriate accommodation

The Agency applies the concept of appropriate accommodation as meaning accommodation measures that are responsive to a person's disability-related needs, resulting in an equal opportunity for the person with a disability to attain the same level of transportation services experienced by others in the federal transportation network. If appropriate accommodation has been provided, no obstacle exists.

Burden of proof & balance of probabilities

A party will meet their burden of proof by providing sufficiently persuasive evidence to support their position. The party who bears the burden must establish that their position is more probable than that of the opposing party (balance of probabilities). If the positions of both parties are equally probable, the party with the burden of proof will not have met their burden.

Equally responsive accommodation

The Agency applies the concept of equally responsive accommodation as meaning an alternative form of accommodation that is provided in a dignified manner and that meets the person's disability-related needs.

Federal transportation network

All transportation services under the authority of Parliament. A description of which transportation services are included as part of the federal transportation network may be found in the section on **Jurisdiction**.

Filed

For a document related to a complaint to be filed with the Agency, it must be sent to the Secretary of the Agency (see the **Agency contact information** section) via facsimile, courier service or mail and copied to all other parties. With respect to mediation settlements, the agreement is filed with the Agency by mailing two separate copies marked as 'Confidential – to be opened by addressee only' to the Agency, with a copy sent to all other parties.

Impairment

A loss or abnormality of a body part (i.e., structure) or the loss or deviation in body function (i.e., physiological function). The existence of an impairment may be established by using the World Health Organization's (WHO) International Classification of Functioning, Disability and Health publication, other related WHO publications and/or medical documentation.

Obstacle

A rule, policy, practice, physical barrier, etc. that directly or indirectly discriminates against a person with a disability and has the effect of denying the person with a disability equal access to services that are available to others in the federal transportation network such that accommodation is required from the service provider.

Participation restriction

A problem an individual experiences in involvement in life situations, which is determined by comparing the individual's experience with that of an individual without an activity limitation. An individual will experience a participation restriction for the purposes of Part V of the Act if they require particular measures to be taken in order that they have equal access to the federal transportation network, which other passengers without the activity limitation do not require.

Person with a disability

A person has a disability for the purposes of Part V of the Act if they have an impairment and an activity limitation and experience a participation restriction in the context of the federal transportation network.

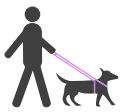
Pleadings

The formal allegations by the parties to a complaint. In the Agency's formal adjudicative process, pleadings refer to the parties' respective claims, responses and replies, and any other documentation filed with the Agency regarding the complaint.

Undue hardship

Excessive hardship as determined by evaluating the adverse consequences of providing accommodation, considering factors such as:

- safety constraints;
- operational constraints;
- economic and financial constraints; and
- physical or structural constraints.

Undue obstacle

An obstacle that can be removed without imposing undue hardship on the transportation service provider.