TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Aéroports de Montréal v. Canadian Transportation Agency*, 2021 TATCE 31 (Review)

TATC File No.: Q-4642-80

Sector: Aviation

BETWEEN:

Aéroports de Montréal, Applicant

- and -

Canadian Transportation Agency, Respondent

[Official English translation]

Heardby: Videoconference on July 15 and 16, 2021

Before: Jennifer Webster, Member

Rendered: November 2, 2021

REVIEW DETERMINATION AND REASONS

Held: The Canadian Transportation Agency has, on a balance of probabilities, proven that the applicant committed the 10 violations outlined in the Notice of Violation. The monetary penalty of $25,000 combined for the 10 violations is upheld.

The total amount of $25,000 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

TRANSPORTATION APPEAL TRIBUNAL OF CANADA

I. BACKGROUND

[1] The applicant, the Aéroports de Montréal, requested that the Transportation Appeal Tribunal of Canada (Tribunal) review a monetary penalty assessed against it by the Canadian Transportation Agency (Agency) in a Notice of Violation (Notice) dated July 28, 2020.

[2] The Notice alleged nine violations of section 4 of the *Personnel Training for the Assistance of Persons with Disabilities Regulations* (the regulations or *Personnel Training* regulations). The Notice described each of the alleged violations as a failure by the applicant, on or about December 10, 2019, to ensure that the employees of an identified contractor had received a level of training appropriate to the requirements of their function in accordance with the regulations. The nine contractors identified in the Notice were:

a. Auberge de l'Aéroport Inn;

b. Beausejour Hotel Apartments / Hotel Dorval;

c. Days Inn & Centre de Conférence – Aéroport de Montréal;

d. Fairfield Inn & Suites by Marriott Aéroport de Montréal;

e. Holiday Inn Express Aéroport Montréal and Hôtel Novotel Montréal Aéroport;

f. Quality Hotel Dorval;

g. Travelodge Hotel by Wyndham Montreal Airport;

h. Budget; and

i. Dollar Rent A Car and Thrifty Rent A Car.

[3] The Notice further alleged a violation of section 9 of the regulations, that was described as follows:

> j. On or about December 10, 2019, Aéroports de Montréal failed to ensure that all employees of contractor "Budget" receive refresher training sessions appropriate to the requirements of their function every three years as established in its training program, contravening section 9 of the *Personnel Training for the Assistance of Persons with Disabilities Regulations*….

[4] The Agency assessed a monetary penalty of $2,500 for each alleged violation. The total monetary penalty assessed against the applicant was $25,000.

II. PRELIMINARY ISSUES

[5] I held a case management conference (CMC) with the parties by videoconference on April 12, 2021.

[6] At the CMC, I confirmed the issues in dispute, and the applicant identified that it intended to argue that the Agency's interpretation of the regulations was administratively invalid because the interpretation was inconsistent with the regulatory power granted by the enabling statute. The Agency identified that it challenged the Tribunal's jurisdiction to consider the Agency's argument about administrative invalidity.

[7] The parties agreed to exchange written arguments about the issues related to administrative invalidity in advance of the hearing. I established a schedule for written arguments with a deadline of May 28, 2021 for the applicant's arguments and a deadline of June 28, 2021 for the Agency's arguments. I advised the parties at the CMC that, although they had agreed to exchange written arguments in advance, they would still have the right to make closing arguments at the hearing and to present supplementary arguments in response to the evidence presented.

[8] The hearing was scheduled for July 15 and 16, 2021, to be held by videoconference.

[9] On July 5, 2021, the applicant contacted the Tribunal's Registrar to request direction from the Tribunal whether a notice of constitutional question in accordance with section 57 of the *Federal Courts Act* was required prior to the hearing. The applicant noted that the parties' written arguments demonstrated divergent positions on this issue. The Agency had argued that a notice of constitutional question was required due to the nature of the applicant's arguments and relief sought, and the applicant stated that it believed such a notice was not required. I responded to the parties on July 8, 2021 through the Registrar's office that I would provide an opportunity for the parties to make submissions about the notice of constitutional question at the beginning of the hearing on July 15, 2021.

[10] The applicant maintained its position at the hearing that a notice of constitutional question was not required by its arguments about the validity of the regulations. It submitted that it was not asking the Tribunal to declare that the regulations were invalid, inapplicable or inoperable for constitutional reasons but instead that it was asking the Tribunal to declare that the Agency's interpretation of the regulations was administratively invalid because it was inconsistent with the *Canada Transportation Act (CTA)*. The applicant relied on the decision of the Federal Court of Appeal (FCA) in *Najafi v. Canada*, 2014 FCA 262 (*Najafi*), in support of its position.

[11] In *Najafi*, the FCA held that a notice of constitutional question was not required because the Court was not being asked to declare that legislation was invalid for constitutional reasons but was instead being asked to interpret a law in a manner that was consistent with the *Canadian Charter of Rights and Freedoms (Charter)*. The applicant argued that it was making a similar request in the present matter by seeking an interpretation of the regulations that was consistent with the *CTA* and the *Constitution Act, 1867*. In these circumstances, the applicant submitted that a notice of constitutional question was not required. The applicant stated that if I found that a notice was required, it was requesting an adjournment to allow it to serve the notice in a timely way.

[12] The Agency argued that the applicant was asking the Tribunal to refuse to apply the regulations for the reasons that the regulations were not constitutional and that the Agency had exceeded its regulatory authority in enacting them. The Agency submitted that the Tribunal did not have jurisdiction to decide a question of law or jurisdiction and that I should, therefore, not consider the applicant's arguments. Alternatively, the Agency argued that if I found that I did have jurisdiction to consider a question of law, a notice of constitutional question was required by subsection 57(1) of the *Federal Courts Act* because the applicant was arguing that I could not apply the regulations due to invalidity.

[13] Subsection 57(1) of the *Federal Courts Act* sets out the requirement for a notice of constitutional question as follows:

> **57 (1)** If the constitutional validity, applicability or operability of an Act of Parliament or of the legislature of a province, or of regulations made under such an Act, is in question before the Federal Court of Appeal or the Federal Court or a federal board, commission or other tribunal, other than a service tribunal within the meaning of the *National Defence Act*, the Act or regulation shall not be judged to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the attorney general of each province in accordance with subsection (2).

[14] Subsection 57(2) of the *Federal Courts Act* requires that a notice of constitutional question be served at least 10 days before the day on which the constitutional question is to be argued.

[15] After considering the parties' submissions, I provided a ruling about the notice of constitutional question. I ruled that, because the applicant had not served a notice of constitutional question, I could not declare the regulations to be invalid, inapplicable or inoperable for constitutional reasons. I further cautioned the applicant that its arguments would be restricted because no notice had been served.

[16] The hearing proceeded with evidence and submissions on July 15 and 16, 2021, after this preliminary ruling.

III. ANALYSIS

A. Legal framework

[17] The Notice of Violation under review was issued as a result of a focused inquiry by Mr. Jean-Michel Gagnon, a designated enforcement officer under the *CTA*, in relation to the applicant's compliance with the regulations.

[18] For the purposes of this matter, the key provisions of the *Personnel Training for the Assistance of Persons with Disabilities Regulations* are as follows:

> **4** Every carrier and terminal operator shall ensure that, consistent with its type of operation, all employees and contractors of the carrier or terminal operator who provide transportation-related services and who may be required to interact with the public or to make decisions in respect of the carriage of persons with disabilities receive a level of training appropriate to the requirements of their function in the following areas:
>
> > **(a)** the policies and procedures of the carrier or terminal operator with respect to persons with disabilities, including relevant regulatory requirements;
> >
> > **(b)** the needs of those persons with disabilities most likely to require additional services, recognition of those needs, and the responsibilities of the carrier or terminal operator in relation to those persons, including the level of assistance, methods of communication and aids or devices generally required by persons with disabilities; and
> >
> > **(c)** the necessary skills for providing assistance to persons with disabilities, including the role of the attendant, and the needs of persons with disabilities travelling with a service animal, including the role and the needs of that animal.
>
> […]
>
> **8** Every carrier and terminal operator shall ensure that all employees and contractors of the carrier or terminal operator who are required by these Regulations to receive training complete their initial training within 60 days after the commencement of their duties.
>
> **9** Every carrier and terminal operator shall ensure that all employees and contractors of the carrier or terminal operator receive periodic refresher training sessions appropriate to the requirements of their function.
>
> **10** Every carrier and terminal operator shall keep its training program current by incorporating, at the earliest opportunity, any new information on procedures and services offered or any specific technologies introduced by the carrier or terminal operator to assist persons with disabilities.

[19] The following definitions from section 2 of the regulations are relevant to the issues in this review:

> ***contractor*** means any person, or employee of that person, who performs services pursuant to a contract or an arrangement with a carrier or a terminal operator, and who is not an employee of the carrier or the terminal operator, but does not include a travel agency;

> ***terminal operator*** means the owner, operator or lessee of facilities or premises related to the transport of passengers within the transportation network governed by the Act;
>
> ***transportation-related services*** includes passenger security screening, baggage handling, vehicle rental, public parking and, in the case of air terminals, all ground transportation from the terminal.

[20] The regulations were made by the Agency pursuant to subsection 170(1) of the *CTA*, which states:

> **170 (1)** The Agency may, after consulting with the Minister, make regulations for the purpose of identifying or removing barriers or preventing new barriers — particularly barriers in the built environment, information and communication technologies and the design and delivery of programs and services — in the transportation network under the legislative authority of Parliament to the mobility of persons with disabilities, including regulations respecting
>
> > **(a)** the design, construction or modification of, and the posting of signs on, in or around, means of transportation and related facilities and premises, including equipment used in them;
> >
> > **(b)** the training of personnel employed at or in those facilities or premises or by carriers;
> >
> > **(c)** tariffs, rates, fares, charges and terms and conditions of carriage applicable in respect of the transportation of persons with disabilities or incidental services; and
> >
> > **(d)** the communication of information to persons with disabilities.

[21] Pursuant to subsection 177(3) of the *CTA*, a contravention of any regulation made under subsection 170(1) may proceed as a violation in accordance with sections 179 and 180, and the Minister of Transport can issue a monetary penalty in the maximum amount of $250,000 for each violation.

B. Issues

[22] The applicant challenged the Notice of Violation on the basis that the hotel shuttle services and car rental agencies identified in the alleged violations were not contractors as defined in the regulations. It argued that the Agency's interpretation of the regulations to include these entities was administratively invalid and outside the regulatory power delegated by the *CTA* because the entities were not in the federally regulated transportation network. It submitted, in the alternative, that even if the definition of contractors in the regulations could extend to entities in the provincial jurisdiction, the hotel shuttle services and car rental agencies were not factually contractors.

[23] The applicant also argued that the Agency had not met its burden to prove all elements of the violations on a balance of probabilities.

[24] The issues in this review may therefore be summarized as:

i. Are the hotel shuttle services and car rental agencies identified in the Notice contractors as defined in the regulations?

ii. Has the Agency met its burden of proof on a balance of probabilities with respect to the elements of the violations?

Issue 1 – Are the hotel shuttle services and car rental agencies contractors?

[25] The Notice alleges that the applicant failed to ensure that training has been completed in accordance with the regulations by the employees of seven hotel shuttle services and two car rental agencies.

[26] Mr. Gagnon testified that he confirmed that each of these enterprises were in a contractual relationship with the applicant through operating licenses that were provided to him by the applicant.

[27] The applicant argued that the enterprises were not contractors for the following reasons:

- the Agency's interpretation of the regulations to include these enterprises as contractors is administratively invalid because the enterprises were not within the federal jurisdiction;
- the Agency's interpretation is not coherent with the personnel training requirements in the regulations on *Accessible Transportation for Persons with Disabilities*; and
- the enterprises are not contractors in fact because they are not employed at or in facilities or premises related to the applicant's terminal operations and they do not directly or indirectly provide service for the airport.

[28] The Agency submitted that the Tribunal did not have the jurisdiction to consider the question of law that the applicant raised in relation to the interpretation of the regulations because subsection 41(1) of the *CTA* provides that appeals on questions of law or jurisdiction are heard by the Federal Court of Appeal.

[29] I will first address the issue of the Tribunal's jurisdiction to determine questions of law before considering the applicant's arguments about the interpretation of the regulations.

[30] Subsection 41(1) of the *CTA* provides the mechanism for appeal from the Agency:

> **41 (1)** An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.

[31] The Agency argued that, given the language of subsection 41(1), questions of law and questions of jurisdiction in relation to the Agency's actions may only be heard by the Federal Court of Appeal. It argued that the applicant's argument about administrative invalidity was outside the Tribunal's jurisdiction as a question of law. It submitted the decision of the FCA in *Canadian National Railway Company v. Scott*, 2018 FCA 148 (*Scott*), in support of its position that questions of law could only be heard by the Court. In *Scott*, the FCA dismissed an application for judicial review of the Agency's decision because it held that the questions of law raised by the applicant should be heard through an appeal under section 41.

[32] Despite the Agency's contention that the ruling in *Scott* requires all questions of law to be heard by the FCA, I interpret the Court's ruling as supporting the proposition that, where there is a statutory appeal mechanism, a party needs to use this appeal prior to seeking judicial review. The FCA determined that the judicial review could not proceed in *Scott* because there were appeals available to the applicant under the *CTA*. The FCA did not, however, decide that questions of law were exclusively in its jurisdiction. At paragraph 38 of *Scott*, the FCA summarized its reasoning for dismissing the application for judicial review:

> [38] In the present matter, I am satisfied that the grounds raised by CN in its judicial review application are grounds which could either be appealed to this Court, pursuant to subsection 41(1) of the CTA, or put before the Governor in Council by way of a petition brought pursuant to section 40 of the CTA. In my opinion, both the appeal under subsection 41(1) and the petition under section 40 of the CTA constitute appeals within the meaning of section 18.5 of the *Federal Courts Act*.

[33] The applicant submitted that subsection 41(1) of the *CTA* did not establish that the Federal Court of Appeal had exclusive jurisdiction over questions of law or questions of jurisdiction. It argued that the Tribunal had the mandate in the context of a review to determine whether a violation had happened. Moreover, the applicant highlighted that the review process is outlined in sections 180.1, 180.2, and 180.3 of the *CTA* and these sections do not make any note of subsection 41(1) of the *Federal Courts Act*. Nor do these sections remove questions of law from the Tribunal's jurisdiction.

[34] The applicant argued that the question of whether the Tribunal had the jurisdiction to determine a question of law should be guided by the analysis of the Supreme Court of Canada (SCC) in *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54 (*Martin*). In *Martin*, the SCC stated that an administrative tribunal's jurisdiction to interpret or decide questions of law should be determined from its empowering legislation. A tribunal would have the jurisdiction over questions of law if the empowering legislation implicitly or explicitly granted the jurisdiction to it. The SCC summarized the approach to determining a tribunal's jurisdiction at paragraph 48:

> 48 The current, restated approach to the jurisdiction of administrative tribunals to subject legislative provisions to *Charter* scrutiny can be summarized as follows: (1) The first question is whether the administrative tribunal has jurisdiction, explicit or implied, to decide questions of law arising under the challenged provision. (2)(a) Explicit jurisdiction must be found in the terms of the statutory grant of authority. (b) Implied jurisdiction must be discerned by looking at the statute as a whole. Relevant factors will include the statutory mandate of the tribunal in issue and whether deciding questions of law is necessary to fulfilling this mandate effectively; the interaction of the tribunal in question with other elements of the administrative system; whether the tribunal is adjudicative in nature; and practical considerations, including the tribunal's capacity to consider questions of law. Practical considerations, however, cannot override a clear implication from the statute itself. (3) If the tribunal is found to have jurisdiction to decide questions of law arising under a legislative provision, this power will be presumed to include jurisdiction to determine the constitutional validity of that provision under the *Charter*. (4) The party alleging that the tribunal lacks jurisdiction to apply the *Charter* may rebut the presumption by (a) pointing to an explicit withdrawal of authority to consider the *Charter*; or (b) convincing the court that an examination of the statutory scheme clearly leads to the conclusion that the legislature intended to exclude the *Charter* (or a category of questions that would include the *Charter*, such as constitutional questions generally) from the scope of the questions of law to be addressed by the tribunal. Such an implication should generally arise from the statute itself, rather than from external considerations.

[35] The applicant argued that the approach outlined by the SCC in *Martin* should be applied to find that the Tribunal has implied jurisdiction to decide questions of law, taking into account the absence of a clear provision to deprive the Tribunal of this jurisdiction and its statutory mandate as an adjudicative tribunal.

[36] The Tribunal considered the question of its jurisdiction to consider questions of law in *Canadian Transportation Agency v. Marina District Development Company*, 2012 TATCE 1 (*Marina District Development*). In this appeal, the Agency had argued that the Tribunal had implicit authority to decide questions of law based on the SCC's analysis in *Martin*. The appeal panel found that it was entitled to determine questions of law relating to the interpretation of the provision governing the matter before it. At paragraph 50 of *Marina District Development*, the panel further explained the nature of its review under the *CTA*:

> [50] The authority given to the Tribunal under section 180.5 of the *CTA* and section 8 of the *Aeronautics Act* allows the Tribunal to determine whether or not the person seeking the review has contravened the designated provision. While that person might need to ask for a review on the basis of the facts, there is no limitation of the grounds on which the Tribunal can base its decision.

[37] The Tribunal's decision in *Marina District Development* was overturned by the Federal Court on the basis of its interpretation of paragraph 57(a) of the *CTA* (see *Marina District Development Company v. Canada*, 2013 FC 800). The Federal Court did not consider the issue of the Tribunal's jurisdiction to decide questions of law.

[38] I am not persuaded that subsection 41(1) of the *Federal Courts Act* removes the Tribunal's jurisdiction to decide questions of law. As the Tribunal found in *Marina District Development*, when the SCC's approach in *Martin* is applied to this Tribunal, it does have the implicit authority to decide questions of law arising out of its review of the enforcement activities of the Agency. I therefore find that I do have jurisdiction to consider the questions of law raised by the applicant in this review.

Administrative invalidity

[39] The applicant argued that the regulations could not be interpreted as applying to contractors such as the hotel shuttle services and car rental agencies because this interpretation would make the regulations inconsistent with their enabling legislation.

[40] The applicant submitted that a regulation is administratively invalid if it does not respect the purpose and mandate provided by the enabling statute.

[41] The Supreme Court of Canada reviewed the question of the validity of regulation in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64 (*Katz Group Canada Inc*.). The SCC described the approach to a consideration of a regulation's validity as follows:

> [24] A successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate (Guy Régimbald, *Canadian Administrative Law* (2008), at p. 132). This was succinctly explained by Lysyk J.:
>
> > In determining whether impugned subordinate legislation has been enacted in conformity with the terms of the parent statutory provision, it is essential to ascertain the scope of the mandate conferred by Parliament, having regard to the purpose(s) or objects(s) of the enactment as a whole. The test of conformity with the Act is not satisfied merely by showing that the delegate stayed within the literal (and often broad) terminology of the enabling provision when making subordinate legislation. The power-conferring language must be taken to be qualified by the overriding requirement that the subordinate legislation accord with the purposes and objects of the parent enactment read as a whole.
>
> (*Waddell v. Governor in Council* (1983), 1983 CanLII 189 (BC SC), 8 Admin. L.R. 266, at p. 292)
>
> [25] Regulations benefit from a presumption of validity (Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 458). This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations, rather than on regulatory bodies to justify them (John Mark Keyes, *Executive Legislation* (2nd ed. 2010), at pp. 544-50); and it favours an interpretative approach that reconciles the regulation with its enabling statute so that, *where possible*, the regulation is construed in a manner which renders it *intra vires* (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, vol. 3 (loose-leaf), at 15:3200 and 15:3230).

> [26] Both the challenged regulation and the enabling statute should be interpreted using a "broad and purposive approach . . . consistent with this Court's approach to statutory interpretation generally" (*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485, at para. 8; see also Brown and Evans, at 13:1310; Keyes, at pp. 95-97; *Glykis v. Hydro-Québec*, 2004 SCC 60, [2004] 3 S.C.R. 285, at para. 5; Sullivan, at p. 368; *Legislation Act, 2006*, S.O. 2006, c. 21, Sch. F, s. 64).

[42] The applicant argued that the SCC's analysis of regulatory invalidity, as outlined in *Katz Group Canada Inc.*, should be applied to the regulations at issue in this review. It submitted that when the Agency interpreted the word "contractors" in the regulations to include the hotel shuttle services and car rental agencies, this interpretation was invalid because it did not respect the limits of the *CTA*, its parent legislation. The applicant argued that a valid interpretation of the word "contractors" would exclude enterprises within the provincial jurisdiction because the *CTA* was expressly enacted to regulate the transportation network within the legislative authority of Parliament. In particular, the applicant noted that the regulation-making authority provided in subsection 170(1) of the *CTA* specifically empowered the Agency to "make regulations for the purpose of identifying or removing barriers or preventing new barriers — particularly barriers in the built environment, information and communication technologies and the design and delivery of programs and services — **in the transportation network under the legislative authority of Parliament** … ". [emphasis added]

[43] The applicant argued that the intention of Parliament was to respect the limits of its jurisdiction and to only regulate enterprises within the federal jurisdiction. The applicant submitted that there is a presumption of constitutional validity and that, with respect to the regulations, the presumption would mean that the regulations should be read in a manner that respects the federal jurisdiction and the inability of Parliament to regulate in the provincial jurisdiction.

[44] The Agency did not dispute that the hotel shuttle services and car rental agencies were enterprises in the provincial jurisdiction. However, the Agency argued that the regulations validly applied to the applicant, which operates as an airport and is within the federal jurisdiction. The Agency submitted that the regulations place an obligation on the applicant, and not on the contractors, to ensure that the required training is completed. The Agency further argued that the applicant's argument of administrative validity was an attempt to seek a declaration of invalidity for constitutional reasons and that such a declaration was not available without a notice of constitutional question as required by subsection 57(1) of the *Federal Courts Act*.

[45] The applicant argued that the regulations are invalid because they do not respect the limit of the enabling statue. According to the applicant, the limit that has not been respected is that the regulations under the *CTA* must be related to the transportation network within the federal

jurisdiction. The applicant argued that the limit of the federal jurisdiction has not been respected because the regulations impact the training of service providers in the provincial jurisdiction, and that, therefore, the Tribunal should read down the definition of "contractors" to ensure that the regulations complied with the enabling statute's limit to the federal transportation network.

Presumption of coherence

[46] The applicant argued that the interpretation of the word "contractors" in the regulations should respect the presumption of coherence. The applicant identified that there is a presumption that all laws that address a particular problem will employ the same solution.

[47] The applicant submitted an excerpt from *Interprétation des lois*, (4th edition, 2009 by P.A. Côté, S. Beaulac and M. Devinat), in which the principle of coherence is reviewed. The authors explain that the legislature is presumed to maintain a consistency and uniformity between related laws. Given this presumption of coherence, according to the authors, the interpretation of a particular law or regulation as in the case before me may be guided and informed by an examination of a related law. Paragraph 1286 of the text describes that statutory interpretation should harmonize related laws such that the same problem is presumed to have been addressed by the same solution in all laws related to the issue.

[48] The applicant argued that a coherent interpretation of the regulations should take into account the *Accessible Transportation for Persons with Disabilities Regulations* (*Accessible Transportation* regulations), which were also enacted pursuant to subsection 170(1) of the *CTA*. Sections 15 to 22 of these regulations outline training requirements in relation to services and support to persons with disabilities. Pursuant to section 15, a transportation service provider must ensure that members of "personnel" receive the training as set out in sections 16 to 19. The applicant as a terminal operator is a transportation service provider. The word "personnel" is defined in the *Accessible Transportation* regulations as:

> ***personnel,*** in respect of a carrier, a terminal operator, CATSA or the CBSA, means
>
> > **(a)** any employees of that carrier or terminal operator or of CATSA or the CBSA, as the case may be;
> >
> > **(b)** any persons, except a travel agency, that have entered into an agreement or arrangement with that carrier or terminal operator or with CATSA or the CBSA, as the case may be, to provide services on their behalf; and
> >
> > **(c)** any employees of the persons referred to in paragraph (b).

[49] The applicant argued that the *Accessible Transportation* regulations mandated initial and refresher training related to the provision of services to persons with disabilities and that these requirements were targeted to address the same training issues as the regulations at issue in this review. The applicant submitted that the *Accessible Transportation* regulations, however, limited

the training requirements to those persons who were within federal transportation through the more restrictive definition of "personnel". It argued that the word "contractors" in the *Personnel Training* regulations should be interpreted in a manner that is coherent with the definition of "personnel" in the *Accessible Transportation* regulations.

[50] According to the applicant, the hotel shuttle services and car rental agencies would not be personnel according to the *Accessible Transportation* regulations because these enterprises do not provide services on the applicant's behalf. The applicant submitted that the meaning of "contractors" and "personnel" in the two sets of regulations should be consistently interpreted on the presumption that the legislature was requiring training to address the same issue of providing services at airport terminals to persons with disabilities. Given the presumption of coherence, the applicant argued that it was not required to ensure that employees of the hotel shuttles and car rental agencies received training because these enterprises were not "personnel" and therefore, also not "contractors" when the two definitions are interpreted harmoniously. The applicant did not, however, explain why a coherent interpretation would align the meaning with "personnel" rather than with "contractors" except to argue that the term "personnel" respects the federal jurisdiction and the term "contractors" does not.

[51] *Interprétation des lois* cites the SCC's decision in *Corp. of Goulbourn v. Regional Municipality of Ottawa-Carleton*, [1980] 1 SCR 496 (*Goulbourn*), in support of the presumption of coherence. In *Goulbourn*, the SCC considered related laws in its interpretation of provincial legislation directed at the Regional Municipality of Ottawa-Carleton. At page 515 of its decision, the SCC explained its reference to the similar statutes as follows:

> Shortly after the passage of *The Regional Municipality of Ottawa-Carleton Act*, 1968 (Ont.), the Legislature of the province enacted similar statutes with reference to other counties and regions of Ontario; for example, *The Regional Municipality of Niagara Act, 1968-9*, 1968-9 (Ont.), c. 106. A comparison of like statutes enacted by the same Legislature is at most of peripheral assistance in determining the proper interpretation of the statute before the Court. Indeed, much debate has taken place in the courts over the years as to whether a reference to posterior legislation is a permissible tool of statutory construction. *(Vide Maxwell on Interpretation of Statutes* (12th ed.) p. 69 *et seq.; vide* also *Kirkness (Inspector of Taxes) v. John Hudson & Co. Ltd*. Here we are not concerned with amendment and repeal but with the help to be gained from a scrutiny of comparable legislation in the same field. Like most other aids to statutory construction, the Court must first be confronted with ambiguity of statutory expression which here we certainly have.

[52] The SCC therefore decided to consider related legislation in *Goulbourn* only after it had determined that there was ambiguity in the impugned statute. The applicant has not argued that reference to the *Accessible Transportations* regulations is necessary for statutory interpretation due to an ambiguity in the *Personnel Training* regulations. Rather, it argued that the two sets of regulations should be interpreted in a coherent, unified manner to ensure that the regulation does not affect enterprises in the provincial jurisdiction.

[53] I do not accept that an interpretation of the *Personnel Training* regulations require reference to the *Accessible Transportation* regulations because the definition of "contractors" is not ambiguous. In addition, the applicant's arguments about the presumption of coherence fail to address both the *Interpretation Act* and the Modern Principle of Statutory Interpretation.

[54] The relevant provisions of the *Interpretation Act* are as follows:

> **15 (1)** Definitions or rules of interpretation in an enactment apply to all the provisions of the enactment, including the provisions that contain those definitions or rules of interpretation.
>
> **(2)** Where an enactment contains an interpretation section or provision, it shall be read and construed
>
> > **(a)** as being applicable only if a contrary intention does not appear; and
> >
> > **(b)** as being applicable to all other enactments relating to the same subject-matter unless a contrary intention appears.
>
> **16** Where an enactment confers power to make regulations, expressions used in the regulations have the same respective meanings as in the enactment conferring the power.

[55] According to section 15 of the *Interpretation Act*, I should read and construe the word "personnel" in the *Accessible Transportation* regulations as applicable to other enactments relating to the same subject matter, such as the *Personnel Training* regulations, unless a contrary intention appears. I find that a contrary intention is apparent on a plain reading of the *Personnel Training* regulations. The contrary intention is that a terminal operator is mandated to ensure that the training is completed by its employees and contractors, which is a different set of people from the "personnel" required to complete training in the *Accessible Transportation* regulations.

[56] Section 16 of the *Interpretation Act* expressly incorporates the presumption of coherence in stating that terms have the same meaning in regulations as in the enabling statute. I note that the *Interpretation Act* does not extend the presumption of coherence in the manner argued by the applicant and does not require that legislation be interpreted such that the same problem is addressed by the same solution.

[57] The Modern Principle of Statutory Interpretation was formally adopted by the SCC in *Rizzo & Rizzo Shoes Ltd*, [1998] 1 S.C.R. 27, at paragraph 21:

> 21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[58] This Modern Principle of Statutory Interpretation does not require an examination of related statutes and regulations to determine whether there is coherence between the solutions enacted by the legislature to address the same subject-matter. Instead, this approach to statutory interpretation requires that I read the words of the regulations in their context, in their grammatical and ordinary sense, and in harmony with the scheme and object of the regulations.

[59] A "contractor" is defined in the *Personnel Training* regulations as "any person, or employee of that person, who performs services pursuant to a contract or an arrangement with a carrier or a terminal operator." The grammatical and ordinary sense of the words in this definition does not, in my view, permit an interpretation that incorporates or applies the definition of "personnel" from the *Accessible Transportation* regulations for the purpose of coherence. The term "personnel" is, as noted by the applicant in its submissions, more restrictive because it describes the group of persons who are required to complete the training as: employees of the carrier, terminal operator, CATSA or the CBSA; persons, except a travel agency, that have entered into an agreement or arrangement with the carrier, terminal operator, CATSA or the CBSA, to provide services on their behalf; and any employees of those persons.

[60] Although the *Accessible Transportation* regulations require the terminal operator to ensure training is completed by persons providing services on their behalf, I am not persuaded that this training requirement has any impact on the interpretation of the training requirement in the *Personnel Training* regulations which mandates that the terminal operator ensure that the training is completed by persons who perform services pursuant to a contract or arrangement. I conclude that the grammatical and ordinary meaning of the words in the "contractor" definition do not include a requirement that the services be provided on behalf of the terminal operator. According to the ordinary meaning of the definition, the services only need to be performed pursuant to a contract or arrangement.

[61] I do not find that the presumption of coherence requires me to consider or incorporate the definition of "personnel" from the *Accessible Transportation* regulations into the *Personnel Training* regulations in order to interpret the meaning of the word "contractors."

Does the evidence establish that the hotel shuttle services and car rental agencies are contractors in fact?

[62] The applicant argued that, even if the definition of "contractor" in the regulations could validly extend to enterprises that were in the provincial jurisdiction, the particular entities of the hotel shuttle services and car rental agencies were not factually within the definition.

[63] The applicant submitted that the regulations should be interpreted in conjunction with the regulation-making authority in subsection 170(1) of the *CTA*.

[64] The applicant argued that the regulations at issue were related to paragraph 170(1)(b) for "the training of personnel employed at or in those facilities or premises or by carriers". It noted that the facilities or premises were defined in paragraph 170(1)(a) as "related facilities and premises" and it argued that the word "related" implied a level of dependence between the terminal and the facilities or premises. The applicant submitted that the hotel shuttle services and car rental agencies were not connected, integrated or dependent on the terminal, and that therefore, the personnel of these agencies were not employed at or in related facilities or premises, as required by subsection 170(1).

[65] The applicant presented a series of cases which have held that services such as taxi and limousine transportation are not part of the federal transportation network and not an integral part of an airport (see *Scott v. Sahota* (No. 2), 2006 CanLII 84482 (SK HRT) at paragraphs 92 to 94, and the cases cited therein). Relying on this line of authorities, the applicant argued that the hotel shuttles and car rental agencies were also not an integral part of the airport and therefore, not employed in related facilities or premises.

[66] Mr. Luc Charbonneau testified on behalf of the applicant. He stated that, at the relevant times, he was the applicant's representative with responsibility for the contracts with the hotel shuttle services and car rental agencies. He explained that the hotel shuttles and car rental agencies were accessories to the applicant's core business and these services were not provided as a service of the airport or in its name. Mr. Charbonneau testified that the contracts with the hotel shuttles provided for a lease of space in the terminal for the shuttles to load and unload. According to the contracts, the shuttle service pays the airport for the lease. He further explained that the contracts with the car rental agencies were similar to those with the hotel shuttles. The applicant and the car rental agencies have a contract through which the car rental agency rents a service counter at the airport.

[67] From a review of Mr. Charbonneau's evidence, I conclude that the employees of the hotel shuttle services and the car rental agencies are employed at facilities and premises that are related to the terminal operation of the applicant. The shuttle drivers are employed at the terminal

entrance for the loading and unloading of customers, and the car rental agents are employed at a counter located within the airport premises. These are related facilities and premises within the meaning of subsection 170(1). I interpret the word "related" in paragraph 170(1)(a) in its ordinary sense as "associated with" or "connected with". I do not interpret the phrase "related facilities and premises" as requiring a level of dependence or integration with the terminal operations.

[68] The applicant further argued that the hotel shuttles and car rental agencies were not contractors because they did not perform services pursuant to a contract or agreement with the applicant. The contracts were, according to Mr. Charbonneau's evidence, for the rental of counter space, shuttle loading spots, and signage at the airport, and not for services.

[69] The Agency argued that the services were being performed by the hotel shuttles and car rental agencies pursuant to contracts between the applicant and the contractors. The Agency further submitted that the services performed by the contractors were "transportation-related services" according to the definition in the regulations.

[70] The applicant provided a list of contractors to Mr. Gagnon in 2018 in the context of his initial investigation. He used this list to guide his focused inquiry. Mr. Gagnon requested further documents from the applicant in November 2019. On December 10, 2019, he received a package of documents from the applicant that included copies of the contracts between the applicant and the hotel shuttles and the contracts between the applicant and the car rental agencies. Mr. Gagnon identified the contracts in his testimony and they were admitted into evidence.

[71] The contracts with the hotel shuttle services are in the form of an Operating License. Through the license, the applicant grants to the hotel "a non-exclusive License authorizing the Licensee to transport passengers in Authorized Vehicles between a hotel establishment and the Montréal – Pierre Elliott Trudeau International Airport (the "Airport"), the whole in accordance with the terms and conditions of the present License." (Exhibit OTC-4).

[72] The contracts with the car rental agencies are also in the form of an Operating License. The Operating License between the applicant and Avis Budget Group (Budget) was entered as Exhibit OTC-11. The preamble to the license notes that the applicant had launched a Request for Tenders for the management and operation of a rental car concession at the Airport and that the licensee (Budget) was a successful Tender and was awarded the right and privilege to manage and operate a rental car concession. Through the Operating License, the applicant granted permission to the licensee to operate "a Vehicle Rental Concession" with exclusive use of a service counter, office space, and parking spaces, subject to the terms set out in the license. The terms of the license between the applicant and Dollar Rent A Car and Thrifty Rent A Car, entered as Exhibit OTC-12, are substantially similar to those in the Budget license.

[73] From my review of the operating licenses, I find that the applicant granted licenses to seven enterprises to perform the services of passenger transportation using hotel shuttles and licenses to two car rental companies to perform the services of a rental car concession, in accordance with the conditions detailed in the contracts. I conclude that the hotel shuttles and car rental agencies are, therefore, performing services pursuant to the terms of a contract with the applicant, and that these enterprises are factually "contractors" within the meaning of the regulations.

[74] Mr. Charbonneau also testified about the ground transportation provided at the Pierre Elliott Trudeau airport by the Société de transport de Montréal (STM). He stated that the STM has a regular bus service from the airport to downtown Montreal and that the STM bus loads and unloads passengers at a designated location at the airport. He also testified that there are self-service kiosks in the airport where passengers can purchase tickets for the STM bus.

[75] The applicant argued that if the regulations were interpreted as including the hotel shuttles and car rental agencies as contractors, then the STM would also be considered a contractor because it provided ground transportation services at the airport. The applicant submitted that it could not be the intention of Parliament to include municipal public transportation such as the STM within the ambit of these regulations. I note that there is no evidence of a contract or other arrangement between the applicant and the STM in relation to the performance of the bus service. Mr. Gagnon requested contracts from the applicant, and he reached his conclusions about the violations based on the contracts provided to him. The definition of contractor in the regulations expressly requires that services be performed "pursuant to a contract or an arrangement with a carrier or a terminal operator." Given that there was no evidence of a contract or arrangement between the applicant and the STM, I find that this argument is purely hypothetical and that this evidence is, therefore, not relevant to the issues in this review.

Issue 2 – Has the Agency met its burden of proof on a balance of probabilities with respect to the elements of the violations?

[76] The Agency has the burden of establishing the alleged contraventions in the Notice of Violation as set out in subsection 180.3(4) of the *CTA*. Subsection 15(5) of the *Transportation Appeal Tribunal of Canada Act* states that the standard of proof is the balance of probabilities.

[77] The Agency must therefore establish each factual element of the alleged violations in the Notice. These elements are:

i. the date of the 10 alleged violations (on or about December 10, 2019);

ii. that the applicant is a terminal operator;

iii. that the companies identified in the Notice are contractors of the terminal operator;

iv. that the applicant failed to ensure that all employees of the above-mentioned companies who provide transportation-related services and who may be required to interact with the public or to make decisions in respect of the carriage of persons with disabilities received initial training as per section 4 of the regulations; and

v. that the applicant failed to ensure that all employees of Budget who provide transportation-related services and who may be required to interact with the public or to make decisions in respect of the carriage of persons with disabilities received refresher training as per section 9 of the regulations.

[78] The Agency provided evidence about the elements of the violations through Mr. Gagnon's testimony. During his testimony, he identified several documents which were entered as exhibits.

[79] According to Mr. Gagnon, he started a focused inquiry into the applicant's compliance with the regulations in December 2018 after he had completed a regular inspection and determined that he had questions about compliance. After he received a list of contractors from the applicant, he contacted 10 hotel shuttle service providers and five rental car companies to obtain information about whether their employees had completed the training required by the regulations.

[80] Based on Mr. Gagnon's identification and submission of the operating licenses, I have already found that the identified companies were contractors of the applicant.

[81] Mr. Gagnon testified about the responses he received from the hotels and car rental companies. He identified an email from a representative of each of the companies in the Notice. The emails provided the following information:

- On October 21, 2019, a representative of the shuttle service for the Travelodge Hotel confirmed that there were eight employees with hire dates between January 1, 2015 and August 9, 2019; he also confirmed that he had "yet to implement the handicap training for the drivers, but I plan on doing so as soon as I get more information" (Exhibit OTC-21);
- On October 21, 2019, a representative of Budget provided Mr. Gagnon a list of 27 counter agents with their date of hire; in this email, the representative identified that 12 counter agents had received initial training in February 2015, but no further training; and that the 15 other agents had not yet received any training; the hiring dates of the 15 agents with no training ranged from October 2015 to October 2019 (Exhibit OTC-22);

- On October 21, 2019, a representative of Holiday Inn Express provided a list of eight shuttle drivers to Mr. Gagnon with their hire dates that were between June 2015 and April 2019; in the email, the representative advised that no training, either initial or refresher training, had been completed by any of the drivers (Exhibit OTC-18);
- On October 28, 2019, a representative of the Days Inn & Centre de Conférence provided a list of drivers with their hiring dates to Mr. Gagnon; according to this list, the Days Inn employed seven drivers with hire dates between May 2014 and July 2019; on November 12, 2019, Mr. Gagnon received a follow-up email on behalf of the Days Inn in which the General Manager advised that none of the drivers had completed training in relation to persons with disabilities (Exhibit OTC-16);
- On October 29, 2019, a representative of the Fairfield Inn & Suites by Marriott provided information to Mr. Gagnon about the training of its employees in accordance with the regulations; according to the list provided, the Fairfield Inn shuttle service employed 10 drivers, eight of whom had received their initial training in November 2018; two drivers were hired in 2019 and had not received their training as of October 29, 2019; the hire dates for these two drivers were June 19, 2019 and July 24, 2019 (Exhibit OTC-17);
- On October 30, 2019, a representative of the Beausejour Hotel Apartments advised Mr. Gagnon that it employed four drivers with hire dates of February 2009, May 2015, July 2017, and August 2019, and that none of these drivers had completed training as required by the regulations (Exhibit OTC-15);
- On October 31, 2019, a representative of Hertz Canada provided information about the counter agents employed by Dollar Rent A Car and Thrifty Rent A Car; the information identified that there were 16 agents and that none of the agents had received initial training; the dates of hire of the agents were between March 1997 and September 2019 (Exhibit OTC-23);
- On October 31, 2019, a representative of the Quality Hotel confirmed to Mr. Gagnon that the hotel had five drivers and that two of the drivers had received initial training on services to persons with disabilities in November 2019[1]; the other three drivers had not completed any training; their hire dates were June 24, 2013; January 11, 2015; and March 22, 2019 (Exhibit OTC-20);
- On October 31, 2019, a representative of the Auberge de l'Aéroport Inn submitted a list of six drivers with hire dates between 2001 and 2018; in the email to Mr. Gagnon, the

[1] The text of the email indicated that the date of the initial training was November 28, 2019 for the two employees. Mr. Gagnon testified that he believed the correct date to be November 28, 2018 because the date of the email was October 31, 2019 and he understood the training to have been completed prior to the date of his focused inquiry.

representative advised that none of the employees had received any formal training (Exhibit OTC-14); and

- On November 21, 2019, the representative of the Holiday Inn Express confirmed to Mr. Gagnon that the list of drivers previously provided by email on October 21, 2019 was also the list of drivers of the Hôtel Novotel.

[82] Mr. Gagnon testified that he concluded from the information provided by the contractors in the emails and in telephone conversations with him that there were employees of each contractor who had not completed the initial training within 60 days after their hire dates, as required by sections 4 and 8 of the regulations.

[83] He also stated that he received the applicant's training program as part of his focused inquiry. The document that was provided to him was created by the applicant in compliance with section 11 of the regulations and the cover page of the document indicated that it had been last updated on September 25, 2019 (Exhibit OTC-2). In the document, the applicant described the content and length of the initial training. The applicant's training program also indicated that the refresher training had the same content as the initial training and the refresher was delivered every three years. Mr. Gagnon concluded from his review of the applicant's training program and the information submitted on behalf of Budget, that 12 Budget employees had not completed refresher training at the three-year interval established by the applicant.

[84] The applicant challenged the reliability of the Agency's evidence that the contractors' employees had not completed the training required by the regulations. In particular, the applicant argued that the information in the emails from the contractors was insufficient evidence given that the Agency did not provide the emails that Mr. Gagnon sent to the contractors to request the information.

[85] It was evident from the emails and Mr. Gagnon's testimony that he made the requests for information about the employees and training through telephone conversations and email requests. I conclude that the information in the emails is sufficiently clear to establish that each contractor was identifying to Mr. Gagnon the names of employees, the dates of hire, and the dates of training (whether initial or refresher). I find that the Agency has proven that the employees identified in the emails either did not complete initial training within 60 days of their hire, as was the case with all nine contractors, or did not complete refresher training within three years of the initial training, as was the case with 12 employees of Budget.

[86] Subsection 3(2) of the regulations states that the definition of terminal operator does not include "an air terminal operator at whose terminal there were less than 10,000 enplaned and deplaned passengers in each of the two preceding calendar years." Mr. Gagnon testified that he confirmed that the applicant was a terminal operator as defined in section 2 of the regulations by

reviewing the figures published by the applicant in relation to the numbers of passengers in 2017 and 2018. The applicant's report on passenger traffic from January 2016 to August 2019 was entered as Exhibit OTC-25. According to this report, there were a total of 19,428,143 passengers in 2018 and 18,165,153 in 2017. I conclude that the Agency has established that the applicant was a terminal operator to whom the regulations applied.

[87] The applicant argued that the Agency had failed to prove two essential elements of the violations – that the violations occurred on or before December 10, 2019, and that the applicant had failed to ensure that the training was completed.

[88] With respect to the issue of the date of the violations, the applicant submitted that the Agency must prove all elements of the violations as of the date specified where there is a legislated prescription period, as in these regulations. It relied on the SCC's adoption of this principle in *R. v. B.(G.),* [1990] 2 S.C.R. 30, at page 49. The applicant argued that the Agency's evidence did not establish the elements of the violations existed as of December 10, 2019 because the dates in the emails from the contractors were dates in advance of the Notice. According to the applicant, since the regulations require initial and refresher training within specified time periods, the failure to prove the elements as of this date was fatal to the Notice of Violation.

[89] The Agency argued the violations of the training requirements occurred as soon as 60 days had passed from an employee's date of hire without the employee having received the training. It submitted that the violations were confirmed through the emails from the contractors and that these violations did occur on or before December 10, 2019, as identified in the Notice. The Agency further argued that the use of the date of December 10, 2019 was not fatal to the Notice, relying on the Federal Court's decision in *Canada (Attorney General) v. Yukon (Whitehorse International Airport)*, 2006 FC 1326. In *Yukon*, the Federal Court determined that the Tribunal did not exceed its jurisdiction by allowing the amendment of four notices of assessment of monetary penalty in circumstances where there was no disadvantage to the Yukon government arising from the amendment.

[90] I find that the Agency has proven that the required elements of the violations occurred on or before December 10, 2019. According to Mr. Gagnon's testimony, he had confirmation through emails from the nine contractors between October 21, 2019 and November 21, 2019 that the required training had not been completed. Mr. Gagnon received the operating licenses from the applicant on December 10, 2019 (see Exhibit OTC-1). He confirmed from his review of these documents that the hotel shuttles and car rental agencies were contractors because they were performing services pursuant to a contract with the applicant. It was only as of December 10, 2019, that Mr. Gagnon had evidence of all the required elements of the violations through his receipt of the operating licenses from the applicant.

[91] I conclude that, as of December 10, 2019, Mr. Gagnon determined that the shuttles and agencies were contractors and that their employees had not received the required initial and refresher training. The employees had not completed the initial training within 60 days of hire. The violations could not have been corrected between the emails from the contractors in October and November 2019 because the time-period of 60 days had already expired. Similarly, the refresher training had not been completed at the three-year interval set out in the applicant's training program by some of the Budget employees. This violation could not have been corrected between the email from Budget on October 21, 2019 because the three-year interval had passed.

[92] I do not believe that the Notice needs to be amended to adjust the date of the violations. However, if such amendment were required to specify the exact dates on which Mr. Gagnon received confirmation from the contractors that the training was not completed, I would amend the dates on the basis that there is no actual prejudice or disadvantage to the applicant arising from the amendment because the applicant has always known the case it had to meet and has had a meaningful opportunity to respond to the allegations.

[93] Finally, the applicant argued that the Agency had not proven that it did not ensure the training was completed and, more specifically, that it did not have a mechanism to ensure that the employees of the contractors completed the training. In my view, the evidence that the employees had not completed either the initial or refresher training is sufficient evidence that the applicant did not fulfill its obligations under section 4 of the regulations to ensure that the employees received the training. The applicant had an opportunity to present evidence of reasonable care or due diligence in discharging its obligations under the regulations in relation to the training of contractors' personnel, and it presented no such evidence. I conclude that the applicant did not ensure that the training was completed in accordance with the regulations.

[94] Mr. Gagnon testified about his assessment of the amount of the penalty for each of the violations. The matrix that he used to consider mitigating and aggravating factors was entered into evidence as Exhibit OTC-26. He considered that the seriousness of the prejudice to passengers was an aggravating factor and that a mitigating factor was the applicant's cooperation throughout his investigation. He explained that the predetermined penalty amount for each violation was $2,500. Each mitigating factor reduced the penalty by 10 per cent and each aggravating factor increased the penalty by 10 per cent, with the result that he assessed a penalty of $2,500 for each of the 10 violations, for a total penalty amount of $25,000. The applicant did not challenge the quantum of the penalty, and I see no reason to change the amount assessed.

IV. DETERMINATION

[95] The Canadian Transportation Agency has, on a balance of probabilities, proven that the applicant committed the 10 violations outlined in the Notice of Violation. The monetary penalty of $25,000 combined for the 10 violations is upheld.

[96] The total amount of $25,000 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

November 2, 2021

(Original signed)

Jennifer Webster
Member

Appearances

For the Agency:	Karine Matte
For the Applicant:	Elizabeth Cullen
	Mathieu Quenneville