



Canadian
Transportation
Agency

Office des
transports du
Canada

Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration



Making Transportation Efficient and Accessible for All



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Canada 

Printed and bound in Canada

ISBN 978-0-662-05998-1

Catalogue No. TT4-13/2008

1st edition, October 20, 2008

Available in multiple formats.

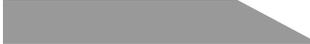
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INTRODUCTION

On June 22, 2007, Parliament enacted amendments to the *Canada Transportation Act* (the CTA) which came into force the same day.

The CTA now authorizes the Canadian Transportation Agency (the Agency), a quasi-judicial administrative tribunal of the federal government, to resolve complaints regarding noise and vibration caused by the construction and operation of railways under its jurisdiction as well as public passenger service providers.

The *Guidelines for the Resolution of Complaints Concerning Railway Noise and Vibration* have been developed to assist persons, municipal governments, and railway companies to resolve issues related to railway noise and vibration.

They set out:

- the collaborative measures that parties must follow before the Agency conducts an investigation or a hearing into a complaint;
- the elements that the Agency considers in determining whether a railway company is in compliance with the noise and vibration provisions of the CTA; and
- how to file a complaint, list the information to be submitted, as well as the process to be followed.

APPLICATION OF THE GUIDELINES

The guidelines apply to railway companies that operate under federal jurisdiction as well as public passenger service providers, including urban transit authorities.¹ A list of these organizations is available on the Agency's Web site at www.cta.gc.ca.

The guidelines apply to all forms of railway noise and vibration produced during the construction and the operation of a railway. For instance, this can be noise from passing trains or idling locomotives, shunting, whistling, or noise from the compression or "stretching" of trains.

Train whistles which are blown for safety reasons to warn of a train's passage are a legal requirement of the *Canadian Rail Operating Rules* (CROR) administered by Transport Canada (TC) pursuant to the *Railway Safety Act* (RSA). These requirements are described in Rule 14 of the CROR which can be found on the TC Web site at www.tc.gc.ca/rail.

Municipal governments seeking to eliminate train whistles for residents living near railway crossings must contact the railway company directly.

More information can be found in the TC Guideline No. 1, *Procedures and Conditions for Eliminating Whistling at Public Crossings*, which can also be accessed on the above-mentioned TC Web site. Queries related to whistling should be directed to TC. The list of TC offices and contact information across the country can also be found on the TC Web site. The guidelines do not relieve the parties of their obligations under the RSA.

¹ These are VIA Rail Canada Inc. and urban transit authorities such as GO Transit, Agence métropolitaine de transport, and West Coast Express. In this document, railway companies and public passenger service providers will be collectively referred to as railway companies.

The guidelines are designed to:

- encourage collaboration among the parties to a railway noise or vibration issue; and
- ensure transparency and consistency in the Agency's decision-making process for noise and vibration complaints.

Agency decisions are legally binding on the parties involved, subject to the appeal rights presented later in these guidelines.

The guidelines are meant to address principally noise and vibration disputes with regard to *existing* railway infrastructure or facilities. For railway construction projects that require Agency approval under subsection 98(1) of the CTA, railway companies must evaluate the potential environmental impacts – including noise and vibration issues.

Before authorizing the construction of a railway facility, the Agency must be satisfied that the proposed infrastructure and facilities will not likely create significant adverse environmental impacts.

Planning and Communication

As municipalities and railway facilities and operations grow and expand in close proximity to each other, careful planning and communication is critical in order to avoid future noise and vibration issues.

Municipal and regional administrations have jurisdiction over zoning and authorization of development near existing railway infrastructure and facilities.

Careful consideration should be given at the planning and approvals stages to measures that will prevent or mitigate the impacts of potentially incompatible land uses, as well as other issues.

Railway companies have control over their construction and operations. They should assess and mitigate their impacts on neighbouring areas – even when the construction and operations are not subject to an environmental assessment and approval under the CTA.

Ongoing communication among all involved in railway noise and vibration issues can help develop awareness of the needs and realities of other parties and may help prevent future complaints.

Whether it is a railway company's participation in a municipal planning consultation or a municipal government working with a railway company to solve problems, exploring solutions in a proactive way can be productive for neighbourhoods, municipalities, and railway companies.

PROVISIONS OF THE CTA REGARDING NOISE AND VIBRATION

Section 95.1 of the CTA states that a railway company shall cause only such noise and vibration as is reasonable, taking into account:

- its obligations under sections 113 and 114 of the CTA, if applicable;
- its operational requirements; and
- the area where the construction or operation is taking place.

Section 113 of the CTA details the level of service a railway company must provide to its customers for services such as the loading, unloading, transportation and delivery of merchandise.

Section 114 specifies a railway company's obligations regarding the transfer of merchandise from its railway to that of other railway companies, the return of rolling stock of other companies and the obligation, where a railway forms part of a continuous line with the railway of another company, to maintain the continuous line of transportation.

Sections 113 and 114 do not relieve a railway company from its obligation to cause only such noise or vibration as is reasonable.

A railway company's operational requirements include not only those operations necessary to effectively run a railway but also any statutory or legal obligations under other legislation such as the RSA.

The area affected by railway construction or operation encompasses those residential, institutional and commercial establishments in close proximity to the railway construction or operation.

Subsection 95.3(1) of the CTA authorizes the Agency to hear complaints and conduct investigations. The Agency evaluates each case on its own merits.

If the Agency determines that the noise or vibration is not reasonable, it may order a railway company to undertake any change in its railway construction or operation that the Agency considers reasonable to comply with the noise and vibration provisions set out above.

COLLABORATIVE RESOLUTION OF NOISE AND VIBRATION COMPLAINTS

The CTA specifies that before the Agency can investigate a complaint regarding railway noise or vibrations, it must be satisfied that the collaborative measures set out in these guidelines have been exhausted.

Collaboration allows both complainants and railway companies to have a say in resolving an issue. A solution in which both parties have had input is more likely to constitute a long-term solution and is one that can often be implemented more effectively and efficiently than a decision rendered through an adjudicative process.

Collaborative measures are expected to be completed within 60 days of the railway company receiving a written complaint – unless the parties agree to extend the process.

Collaborative Measures

Prior to raising their concerns with a railway company, complainants should consult their municipal government with regard to the railway noise and vibration issues they have. The municipal government may have information and expertise that is pertinent to the resolution of the complaint and may wish to become involved in the discussion with the railway company.

To satisfy the collaborative measures requirements of the CTA, the following measures must be undertaken:

- **Direct communication shall be established among the parties.**

Complainants must have the opportunity to:

- express their concerns clearly; and
- describe the impact of the noise or vibration to the railway company.

The railway company must have the opportunity to:

- be adequately informed of the situation,
- receive and exchange the necessary information to understand the issue and explore solutions (The type of information that should be provided to a railway company for it to understand the issue can be found in the complaint form); and
- present its views and relevant information on its operations.

The railway must also respond to a written complaint within 30 days, and agree on a date within the following 30 days to meet and discuss the resolution of the complaint.

- **A meaningful dialogue shall take place.**

Each party must come to the meeting prepared to listen to the other's concerns and be willing to explore available options. For this dialogue to be productive, each party or their representative must have a mandate to negotiate.

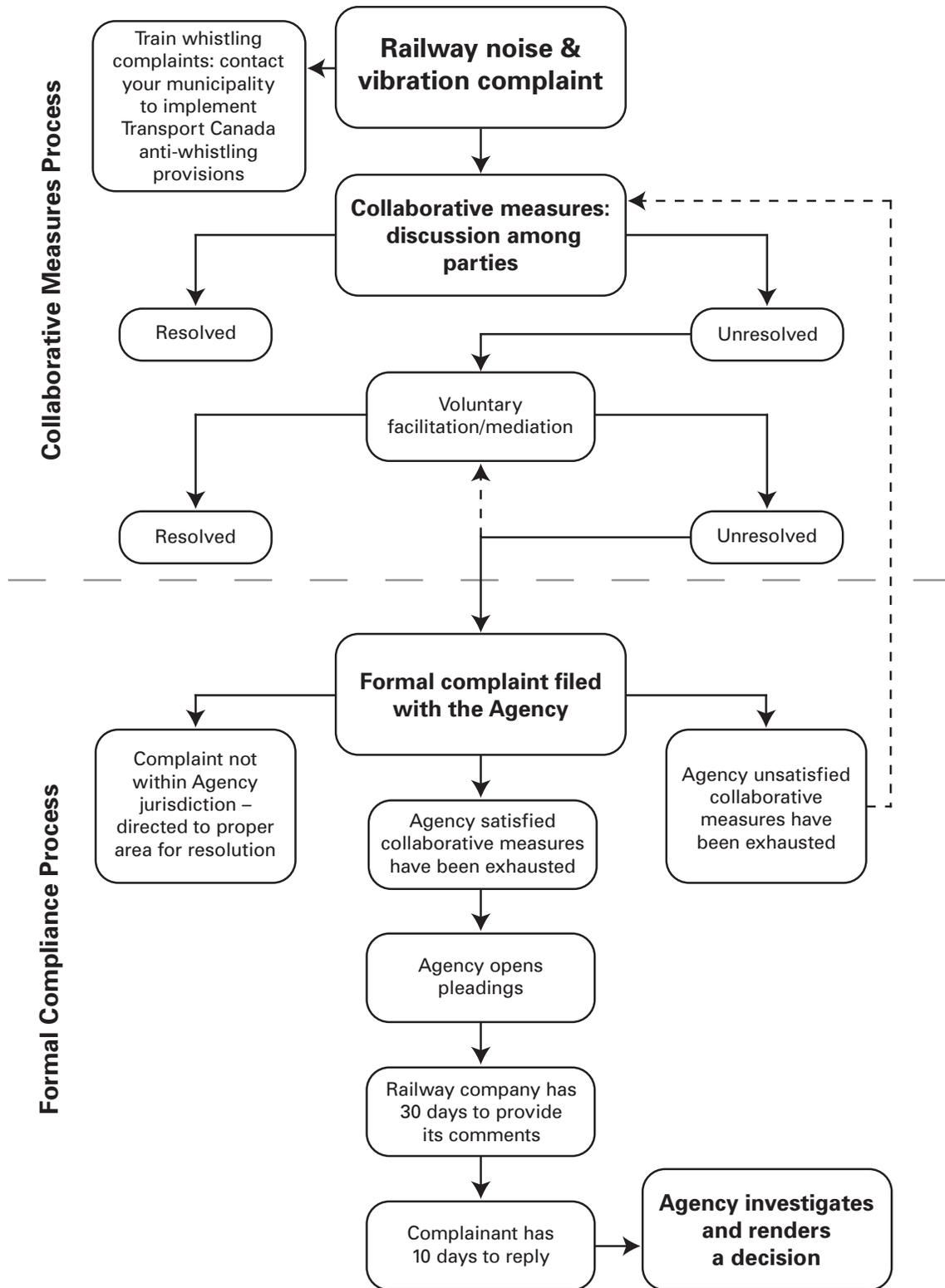
- **Proposed solutions shall be constructive and feasible.**

The parties must assess the solutions proposed and make reasonable efforts to resolve the complaint. In assessing the proposed solutions, parties should consider the elements the Agency will use in resolving noise and vibration complaints (set out on pages 13 and 14).

- **Facilitation and mediation shall be considered.**

If the parties are unsuccessful in resolving an issue on their own, they must consider whether to use third party facilitation or mediation services.

Railway Noise and Vibration Complaint Process



Resources Available to the Parties to Resolve Issues

One resource is a document entitled Local Dispute Resolution Framework jointly developed by the Railway Association of Canada and the Federation of Canadian Municipalities. It can be found on their joint Web site at www.proximityissues.ca. This site also includes the list of railway companies operating in Canada and their contact information, various technical documents, mitigation measures and best practices, and other useful information on proximity issues.

Railway company contacts can also be obtained from Agency staff.

Facilitation and Mediation

Facilitation and mediation are collaborative approaches to solving disputes in which a neutral third party helps to keep the discussion focussed and assists the parties in finding a mutually beneficial solution.

In both cases, the parties jointly make decisions to resolve the disputed issues and ultimately determine the outcome.

Facilitation is an informal process. A facilitator works with the parties to confirm the issue(s) in dispute and to determine if there are any common areas of agreement that can lead to a quick resolution.

Mediation is a more structured and managed process than facilitation, yet is still a flexible and highly effective means of resolving issues. Mediation is confidential, unless the parties agree otherwise, and allows the parties to develop creative solutions that may not be available through formal adjudication.

Agency Facilitation and Mediation Services

While the parties are encouraged to and should first consider local facilitation and mediation services, they may wish to discuss dispute resolution options with Agency staff. Given their extensive knowledge of the railway industry and issues, Agency staff may be able to assist the parties in resolving disputes informally through facilitation.

Parties may also, on agreement, request the mediation services of the Agency for issues under its jurisdiction.

An Agency-appointed mediator will contact the parties to initiate the mediation process. The Agency's time frame for completing the mediation process is 30 days – unless the parties to the mediation agree otherwise – and the mediation services can be accessed at no cost to the parties. More information on the Agency's mediation process can be obtained at www.cta.gc.ca.

FILING A COMPLAINT WITH THE AGENCY

The Agency will only conduct an investigation or hear a complaint once it is satisfied that the parties have tried and exhausted the collaborative measures set out above.

Should one of the parties fail to collaborate, the Agency may accept the filing of a complaint before the expiry of the above-noted 60 day collaborative period.

In cases where the parties are not able to resolve the issues between themselves or by way of facilitation or mediation, a complaint may be filed with the Agency requesting a determination under the formal adjudication process. **The complaint must include evidence that the parties have tried and exhausted, or that one of the parties has failed to participate in, the collaborative measures set out in these guidelines.**

Information brought before the Agency should be specific and substantiated. Legal representation is not required.

Complaints may be filed by individuals, institutions, local groups, or municipalities that consider their level of exposure to railway noise or vibration to be unreasonable. When the Agency investigates a complaint, it will ensure that the municipal government is informed of the complaint and will seek its comments.

To avoid investigating numerous complaints for the same railway construction or operation, the Agency encourages complainants to consult others potentially affected before filing a complaint. This may save time and effort for all parties.

Complaints may be made either in writing or filed electronically and must include all supporting information (see Complaint Form). Written complaints must be signed by the complainant and sent to the Agency at the following address:

Secretary
Canadian Transportation Agency
Ottawa, Ontario K1A 0N9

or by facsimile to: 819-997-6727

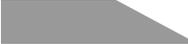
Complaints filed electronically are to be sent to the following e-mail address:

secretaire-secretary@otc-cta.gc.ca

To courier a complaint, please use the following address:

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

A copy of the complaint filed with the Agency must be sent concurrently to all parties involved.



PROCESS

In accordance with its General Rules, after receiving a complaint, the Agency ensures that each interested party has the opportunity to comment on the complaint and any disputed issues. In general, the Agency invites the other interested parties to respond within 30 days, and then allows the complainant 10 days to reply.

Both complainants and railway companies are responsible for presenting evidence to support their position before the Agency. The Agency may pose its own questions, request further information, and conduct a site investigation where necessary. The Agency may also order parties to undertake at their own expense specific studies or tests required to provide adequate and reliable data or assessments.

As an impartial body, the Agency cannot prepare or document a complaint nor can it provide funding to any party for the preparation of a complaint, answer or reply.

The Agency reviews all evidence that it has obtained through its investigation to develop a comprehensive understanding of the circumstances of each case, before rendering its decision or determination.

The Agency strives to process complaints within 120 days of receiving a complete application. However, given the complexities or the number of parties involved in some noise or vibration complaints, this goal may not be met. In such cases, the Agency will act as expeditiously as possible.

Parties are encouraged to continue to work together to seek a resolution even though a complaint may be before the Agency.

ELEMENTS THE AGENCY WILL USE IN RESOLVING NOISE AND VIBRATION COMPLAINTS

In determining whether a railway company has caused only such noise or vibration as is reasonable under section 95.1 of the CTA, the Agency will consider the following elements:

- the railway company's obligations to provide adequate and suitable service to its customers as well as its operational requirements, such as issues of logistics, efficiency and safety;
- the affected area where the railway construction or operation takes place, including its zoning and its occupation (i.e., type of land use), the proximity of the affected persons, and any relevant changes in the affected area's land use;
- railway operations in the affected area, including any relevant changes (volume of traffic, speed, length and frequency of trains, methods of operation, increase or concentration of operations);
- the characteristics and magnitude of the noise or vibration (such as the level and type of noise [impulse or constant], the time of day, duration, and frequency of occurrence);
- relevant noise or vibration measurements or studies conducted in the area affected;
- the presence of ambient noise other than that of railway operations, such as highway noise;
- the impact of the noise or vibration disturbance on the persons affected;
- relevant standards to assess the significance of the effects of noise and vibration levels;

- available mitigation methods and technologies that are cost-effective and operationally feasible;
- efforts made by the parties to reduce the noise or vibration at its source and/or at the point of reception, to prevent its propagation, and mitigate its impact on the persons affected; and
- other issues relevant to the complaint.

STANDARDS AND GUIDELINES

Many standards and guidelines have been developed regarding noise and vibration. For instance, some municipalities and provinces have developed goals or standards of maximum acceptable noise levels at the point of reception that are contained in by-laws, policies or guidelines. The railway industry uses emission standards to control noise at the source.

The Agency may take these standards and guidelines into account in its deliberations, but is not bound by them.

WHAT IS REASONABLE?

The Agency determines what is “reasonable” noise or vibration taking into consideration all of the elements mentioned above and the jurisprudence regarding what is “reasonable”. Reasonableness is determined on a case-by-case basis and relates to an objective sense of what is just and proper in a given circumstance. What is reasonable in some circumstances may not be reasonable in other circumstances.

The challenge is to carefully balance the concerns of communities with the need for a railway company to maintain efficient and economically viable railway operations. Overall, this balance is inherent in the statutory requirement that the allowable noise or vibration be only that which is reasonable.

DECISIONS AND APPEALS

Any Agency Decision is subject to the following conditions:

- it is binding upon the parties and remains in effect until it is amended or rescinded;
- it may be reviewed by the Agency in light of new facts or circumstances;
- it may be appealed to the Federal Court of Appeal on a matter of law or jurisdiction within one month of the date of the order or decision (section 41 of the CTA); and
- it may be appealed to the Governor in Council at any time (section 40 of the CTA).

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 General Rules (www.cta.gc.ca), a claim for confidentiality can be made.



PRIVACY

Decisions are posted on the Agency's Web site and include the names of the parties involved. The decision will also be distributed to a number of organizations which have subscribed to and receive Agency Decisions.



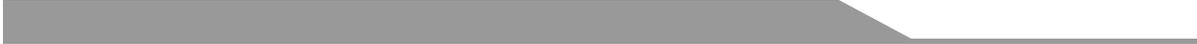
TECHNICAL ADVISORY COMMITTEE

The Agency will establish a technical advisory committee to provide expertise and advice on best practices of general application related to noise and vibration issues. The advisory committee will not provide advice on individual complaints that the Agency mediates or adjudicates.



REVIEW OF GUIDELINES

The present Guidelines will be reviewed no later than three years after coming into effect so as to reflect current trends and the Agency's experience in resolving railway noise and vibration complaints.



RELEVANT DOCUMENTS TO THE RESOLUTION OF NOISE AND VIBRATION COMPLAINTS

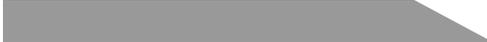
Published by the Canadian Transportation Agency:

- *Consultation Guide on Railway Noise and Vibration Guidelines*
- *Resolving Disputes Through Mediation*
- *Canadian Transportation Agency General Rules*
- *Guide to Railway Works Cost Apportionment*
- *Are you involved in a transportation-related dispute?*

The above are available in alternate formats.

Published by the Railway Association of Canada/Federation of
Canadian Municipalities:

- *Final Report: Proximity Guidelines and Best Practices*



FOR MORE INFORMATION

For more information or copies of the above documents:

Toll Free: 1-888-222-2592

Facsimile: 819-997-6727

TTY: 1-800-669-5575

E-mail: info@otc-cta.gc.ca

For more information on the *Canada Transportation Act*, the Agency and its responsibilities, or Agency Decisions and Orders, you can access the Agency's Web site at [**www.cta.gc.ca**](http://www.cta.gc.ca).