

**BILL S-33: AN ACT TO AMEND THE CARRIAGE BY AIR ACT**

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## LEGISLATIVE HISTORY OF BILL S-33

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	7 November 2001
Second Reading:	20 November 2001
Committee Report:	3 December 2001
Report Stage:	5 December 2001
Third Reading:	5 December 2001

### SENATE

Bill Stage	Date
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First Reading:	25 September 2001
Second Reading:	16 October 2001
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Report Stage:	
Third Reading:	6 November 2001

Royal Assent: 18 December 2001

Statutes of Canada 2001, c.31

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL S-33:  
AN ACT TO AMEND THE CARRIAGE BY AIR ACT\*

BACKGROUND

A. Introduction

On 25 September 2001, Bill S-33, An Act to amend the Carriage by Air Act, was introduced in the Senate. The intent of this Bill is to amend the *Carriage by Air Act* to enable Canada to ratify and adopt as law the Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal on 28 May 1999 (Montreal Convention) when it comes into international force and effect.

The Montreal Convention constitutes an updating and modernization of the rules of the 1929 Warsaw Convention, which is a global regime of limited liability for international air transportation. The Montreal Convention will result in two significant changes:

- the introduction of an unlimited liability regime; and
- the ability for most passengers to choose their own local system of law when making claims.

Eventually, the Montreal Convention will become the global standard for air carrier liability as more countries subscribe to it. However, the proposed amendments to the *Carriage by Air Act* contained in Bill S-33 will not void the Warsaw Convention because Canada may have bilateral aviation partners which are not yet parties to the Montreal Convention.

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\* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

## B. The Current Regime: The Warsaw Convention

The 1929 Warsaw Convention provides a world-wide system of standard rules for international air carriage, particularly in regard to liability arising out of the death or injury of passengers, the damage or loss of baggage or cargo, and delayed carriage. Without such a convention, complex conflicts of laws would arise and the settlement of claims would be unpredictable, costly and possibly uninsurable. In addition, conflicts of jurisdiction would arise that would further aggravate the settlement of liability claims.

The Warsaw Convention became part of Canadian law by the current *Carriage by Air Act*, a short enabling Act which incorporates the Convention and various related protocols as schedules to the Act.<sup>(1)</sup>

Limiting liability is an old practice in transportation, designed to protect the carrier from bankruptcy. The liability limits of the Warsaw regime in the air mode are low (only about \$35,000 per passenger). Cargo owners insure beyond the liability limits if they have concerns that any losses could not be fully covered by the carrier.

Discussions in the mid-1990s by the International Air Transport Association (IATA) led to consensus that there should be no arbitrary limitation of liability. This was proposed by carriers and accepted by Canadian and other aeronautical authorities, including the United States, pending further action by the International Civil Aviation Organization (ICAO).

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(1) The *Carriage by Air Act* has five Schedules:

Schedule I	Convention for the Unification of Certain Rules Relating to the International Carriage by Air. Signed at Warsaw, 12 October 1929 (known as the Warsaw Convention)
Schedule II	Provisions as to Liability of Carrier in the Event of the Death of a Passenger
Schedule III	Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 (known as the Hague Protocol, ratified by Canada in 1964 by way of an amendment to the <i>Carriage by Air Act</i> )
Schedule IV	Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at the Hague on 28 September 1955 (known as the Montreal Protocol No. 4, ratified by Canada by way of amendment to the <i>Carriage by Air Act</i> (See S.C. 1999, c. 21. Montreal Protocols Nos. 1 and 2 allowed for Special Drawing Rights of the International Monetary Fund to replace gold in calculations for liability. They came into force in February 1996. Protocol No. 3 was contentious and did not come into force.)
Schedule V	Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other Than the Contracting Carrier (known as the Guadalajara Convention of 1961, accepted by Canada by way of amendment to the <i>Carriage by Air Act</i> (see S.C. 1999, c.21))

In Canada, key stakeholders – including Air Canada, Air Transat, and the Air Transport Association of Canada – were involved in consultations leading to the development of the Montreal Convention.

### C. The Proposed Regime: The Montreal Convention

The Montreal Convention is an initiative undertaken by the International Civil Aviation Organization (ICAO) to modernize the Warsaw Convention. The Montreal Convention preserves universality and other aspects of the Warsaw system but, in a major departure, features unlimited liability provisions.

The Montreal Convention introduces a two-tier liability system:

- The first tier raises liability to 100,000 Special Drawing Rights (approximately US\$135,000) per victim irrespective of fault.
- The second tier permits carriers to use certain legal defences for claims beyond 100,000 Special Drawing Rights, but has no limit of liability.

The Montreal Convention has four additional important features:

- a carrier must maintain adequate insurance coverage to cover potential liability;
- legal action for damages resulting from the death or injury of a passenger may be brought in the country of the passenger's principal and permanent residence, so long as the carrier is active in that jurisdiction;
- carriers are authorized to use modern electronic documentation for such things as tickets for passengers and waybills for cargo; and
- carriers can be required by national law to make advance payments to assist entitled persons in meeting immediate economic needs; the amount of the advance payment will be subject to national law and deductible from the final settlement.

The proposed amendments to the *Carriage by Air Act*, contained in Bill S-33, will enable Canada to ratify and adopt as law the Montreal Convention when it comes into international force and effect. Canada signed the Convention on 25 September 2001.

The Montreal Convention can have international force and effect only after it has been ratified by a quorum of 30 member states of the International Civil Aviation Organization. A total of 67 nations, including all of Canada's major trading partners, have signed the Montreal Convention, and 11 of these have ratified it. The United States – which in the past has disregarded the Warsaw Convention in favour of its own laws – has signed the Montreal Convention but, like Canada, has not yet ratified it.

## DESCRIPTION AND ANALYSIS

Bill S-33 consists of six clauses and a schedule.

- Clause 1 makes a grammatical adjustment to the long title of the *Carriage by Air Act* to reflect that, as a result of the bill, more than one international convention is incorporated in the statute (with the proposed addition of the Montreal Convention as Schedule VI to the Act).
- Clause 2 adds section 2 (2.1) to the Act to make reference to a new Schedule VI, the Montreal Convention, and to give it force of law in Canada. In addition, clause 2 replaces section 2(3) of the Act so as to allow the Governor in Council to publish lists of the parties to all the Conventions and Protocols set out in the Schedules to the Act. It also authorizes the Governor in Council to publish lists of those parties which have made declarations that the provisions of Schedules III, IV or VI shall not apply in respect of carriage by air by state or military authorities. Finally, clause 2 replaces section 2 (5) to clarify the applicability of Article 17 in Schedule VI (Montreal Convention) as well as Article 17 in Schedule I (Warsaw Convention), already included.
- Clause 3 renumbers section 3 as section 3(1) and adds a new section 3(2) to clarify the jurisdiction of a Canadian court where an action is brought under the Montreal Convention against a state that is a party to the Convention.
- Clause 4 replaces section 4 to make reference to Schedule VI and allows for the Governor in Council to make regulations providing that the Schedules referred to in the section shall apply to domestic air transportation.
- Clause 5 introduces the Montreal Convention as an annex to the Act, and designates it as Schedule VI.

- Clause 6 concerns the coming into force of the bill, which will be on a date to be established by the Governor in Council.

Included as a Schedule to the bill (proposed Schedule VI to the *Carriage by Air Act*) is the text of the Montreal Convention, comprising 57 articles set out in seven chapters.

- Chapter I covers the scope of the Convention.
- Chapter II covers user documentation requirements and some aspects of cargo.
- Chapter III is a substantive chapter covering actual liability limits and monetary definitions, review of limits, advance payments, defences allowing for limiting liability and so on.
- Chapter IV covers carriage by more than one mode.
- Chapter V is for situations where the carriage is provided by a carrier other than the contracting carrier.
- Chapter VI covers other provisions such as insurance.
- Chapter VII contains the final Articles which relate to coming into force, signatories and reservations.

## COMMENTARY

Departmental officials point out that key stakeholders – including Air Canada, the former Canadian Airlines International Limited, Air Transat, and the Air Transport Association – participated as part of the Canadian delegation along with other major international airlines and the International Air Transport Association in the development of the Montreal Convention. These stakeholders and others were consulted in the development of the Convention and, according to departmental officials, are strongly supportive of Canada signing and ratifying it, particularly because liability is not regarded as an issue upon which airlines compete. Departmental officials further note that the major international air carriers – including Air Canada and the Canadian International charter companies – have already implemented, through filed tariffs, the key unlimited liability provisions of the Montreal Convention.