

**BILL C-36: AN ACT TO AMEND THE AIR CANADA
PUBLIC PARTICIPATION ACT**

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LEGISLATIVE HISTORY OF BILL C-36

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 10 December 2007

Second Reading:

Committee Report:

Report Stage:

Third Reading:

SENATE

Bill Stage	Date
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First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

This bill did not become law before the 39th Parliament ended on 7 September 2008.

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 Michel Bédard.

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PUBLIC PARTICIPATION ACT*

BACKGROUND

The 1988 *Air Canada Public Participation Act*⁽¹⁾ set out conditions for the privatization of Air Canada. Along with transitional measures leading to government divestiture, the Act sought to ensure that Air Canada would continue to operate in both French and English by making the newly privatized corporation subject to the *Official Languages Act*⁽²⁾ (the OLA). A further provision required Air Canada to maintain its head office in Montréal, and operational centres in Winnipeg, Montréal, and Mississauga.

Air Canada is subject to the *Official Languages Act* in its entirety. The Act compels Air Canada not only to provide communications and service to the public in both official languages (Part IV of the OLA)⁽³⁾ but also to maintain a bilingual workplace (Part V).⁽⁴⁾ In addition, Air Canada is subject to provisions that ensure equal opportunities for employment

* 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.

(1) R.S. 1985, c. 35 (4th Supp.).

(2) R.S. 1985, c. 31 (4th Supp.).

(3) The scope of Air Canada's obligations is specified in the *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48. Generally, in-flight services must be provided in both official languages on any route that starts, has an intermediate stop or finishes at an airport located in the National Capital Region, the Montréal metropolitan area or the City of Moncton, or between cities in provinces that have a linguistic minority of at least 5%. Ground services must be provided in both official languages at airports that serve at least 1 million passengers a year or if the demand for services in the minority official language is equal to at least 5% of the total demand. Offices that provide ticketing and reservation services or cargo services in cities are subject to the same regulations as apply to offices serving the general public.

(4) Under Part V of the Act, Air Canada must provide its employees with personal and central services, and regularly used work instruments, in both official languages in designated bilingual regions.

and advancement, as well as a requirement that its work force reflect the presence of both official language communities (Part VI).

After Air Canada acquired Canadian Airlines, the regional carriers of the two airlines were amalgamated into Air Canada Jazz. In 2000, Parliament passed amendments to the *Air Canada Public Participation Act* that ensured that Air Canada's subsidiaries, such as Jazz and ZIP, would provide service to the public in both official languages. These subsidiaries are subject only to Part IV of the *Official Languages Act*, which requires customer service in both official languages, where numbers warrant.

In September 2004, Air Canada emerged from bankruptcy protection under the *Companies' Creditors Arrangement Act*. While receiving this protection, Air Canada underwent substantial restructuring that resulted in the formation of new corporate entities. Air Canada itself became a wholly owned subsidiary of a newly created parent company, ACE Aviation Holdings Inc. Several internal divisions and former subsidiaries of Air Canada were spun off into limited partnerships under the direct or indirect control of ACE Aviation.⁽⁵⁾ While the *Air Canada Public Participation Act* continues to apply to Air Canada itself, ACE Aviation and the new corporate entities it owns are not currently subject to official language obligations.

The then Minister of Transport, the Hon. Jean Lapierre, tabled Bill C-47, An Act to amend the Air Canada Public Participation Act⁽⁶⁾ in the House of Commons on 2 May 2005. The bill would have amended existing legislation to ensure that Air Canada's successor corporations were subject to official language requirements. The bill would also have required ACE Aviation Holdings Inc., the parent company that now controls Air Canada and its subsidiaries, to retain its head offices in Montréal.

Bill C-47 died on the *Order Paper* in November 2005.

(5) On 30 September 2004, ACE became the parent holding company of the reorganized Air Canada and each of its subsidiaries. In addition to Air Canada itself, ACE took control of Aeroplan, Jazz, Destina and Air Canada Vacations (Touram), which were already separate legal entities. Air Canada Technical Services (ACTS), AC Cargo, Air Canada Ground Handling Services and Air Canada Online were established as stand-alone limited partnerships under ACE. Jazz was reorganized into Jazz Air Limited Partnership. Source: *ACE Aviation 2004 Annual Report*, p. 11, available online at: <http://www.sedar.com/csfsprod/data54/filings/00757486/00000001/x%3A%5CSedar%5C2005%5CACE%5Cannualreport%5Cannualreport2004.pdf>.

(6) 1st Session, 38th Parliament, 53-54 Elizabeth II, 2004-2005.

On 15 July 2006, the House of Commons Standing Committee on Official Languages tabled a report on the applicability of the OLA to ACE Aviation Holdings Inc.⁽⁷⁾ On 18 October 2006, the Hon. Lawrence Cannon, Minister of Transport, Infrastructure and Communities, tabled Bill C-29, An Act to amend the Air Canada Public Participation Act. This bill substantially restates the context of the former bill C-47, but it also takes into consideration some of the concerns raised by the Committee in its report.

DESCRIPTION AND ANALYSIS

Clauses 1 to 4 of Bill C-29 rename the *Air Canada Public Participation Act* the *Air Canada and Its Affiliates Act*, and make housekeeping amendments that change the arrangement of the Act.

A. Affiliates of Air Canada

1. Application of the *Official Languages Act*, and Limitations and Exceptions

Clause 5 of Bill C-29 adds a new section 10.2 to the *Air Canada Public Participation Act*. Section 10.2(1) is a blanket clause stating that the *Official Languages Act* applies to all Air Canada affiliates that come within the legislative authority of Parliament in respect of aeronautics.

Section 10.2(2) provides that the Governor in Council may, by regulation, designate the businesses affected by section 10.2(1). Section 10.2(3) sets out the circumstances in which this designation ceases to have effect.

Sections 10.2(4) and 10.2(5) institute limitations to the blanket application of the OLA. As previously stated, Part IV of the OLA requires an entity to offer customer or consumer services in both official languages. Parts VIII, IX, and X set out enforcement mechanisms, such as investigations and court remedies, that may apply if an entity breaches Part V. Only Parts IV, VIII, IX and X of the OLA apply to:

- an air service undertaking owned and operated by Jazz Air Limited Partnership; and
- any new undertaking that provides air services.

(7) House of Commons, Standing Committee on Official Languages, *Application of the Official Languages Act to ACE Aviation Holdings Inc. Following the Restructuring of Air Canada*, Report 1, 1st Session, 39th Parliament (adopted by the Committee on 13 June 2006; presented to the House on 15 June 2006).

Section 10.2(6) sets out a number of other exceptions to the blanket application of the OLA. Official language requirements for affiliates do not apply at all to some entities.

- Paragraph 10.2(6)(a) states that an affiliate is exempt from official language requirements if not controlled by ACE Aviation or its subsidiaries. This clause was designed to ensure that a corporation that acquired ACE Aviation, or any of its affiliates, would not itself be subject to the OLA. In other words, language requirements apply from ACE Aviation on down, but would not apply to a parent company that bought ACE or other Air Canada subsidiaries.
- Paragraph 10.2(6)(b) is a somewhat confusing clause that exempts an undertaking, other than Jazz Air Limited Partnership, that was owned or operated on 1 April 2003 by an affiliate of the Corporation (i.e., Air Canada) and that continues to be owned by an affiliate of the Corporation when the Act comes into force. Paragraph 10.2(6)(b) is meant to exempt Air Canada subsidiaries that were previously exempt from official language requirements, most notably Aeroplan, and Air Canada's tour operators, Destina and Air Canada Vacations (Touram). These companies were previously exempt because they did not provide "air services, including incidental services" within the meaning of section 10(10) of the *Air Canada Public Participation Act*.⁽⁸⁾ Since Aeroplan, Destina and Touram were separate legal entities prior to restructuring, they will remain exempt from the Act. Air Canada Technical Services (ACTS), AC Cargo, Air Canada Ground Handling Services and Air Canada Online, which were established during the restructuring, will be subject to Part IV of the OLA.
- Paragraphs 10.2(6)(c) and (d) exempt new undertakings that do not provide air services, or that provide services exclusively outside of Canada.

2. Definitions of Affiliates

Section 10.2(7) defines affiliation, and control of affiliates. An affiliate is a corporation controlled by another corporation, or controlled by the same parent. The term affiliate includes partnerships and corporations. Control means over 50% of the voting shares and control of the board of directors of the affiliated corporation or partnership.

B. Application of the Act to ACE Aviation Holdings Inc.

The *Air Canada Public Participation Act* currently requires Air Canada's head office to be located in Montréal. Section 10.3 extends this requirement to ACE Aviation Holdings Inc. (ACE Aviation), the holding company that now controls Air Canada.

(8) There is some debate as to whether Aeroplan is in fact an "incidental" air service under section 10(10) of the *Air Canada Public Participation Act* and therefore subject to official language requirements. The Official Languages Commissioner seems to believe Aeroplan is subject to the OLA, and has investigated complaints against Aeroplan, although they were stayed when Air Canada entered bankruptcy. The courts have yet to rule on whether the Act applies to Aeroplan.

Under section 10.3, the articles of incorporation of ACE Aviation are deemed to contain provisions requiring ACE Aviation to ensure that members of the public can communicate with and obtain services in either official language from both the head office and any other office where there is a significant demand for bilingual services. The articles of incorporation are also deemed to include a provision requiring the company to retain its head office in Montréal.

Section 10.4 prevents ACE Aviation from applying for continuance in another jurisdiction, meaning that the company is required to be incorporated under the *Canada Business Corporations Act*. ACE Aviation may not change its articles or bylaws in a way that is inconsistent with the head office and language requirements outlined above.

C. Transitional Provisions

Clause 6 of the bill is a transitional provision stating that unresolved complaints made under the *Official Languages Act* against Air Canada or its subsidiaries before the restructuring will continue to apply to its successor corporations.

COMMENTARY

Bill C-29 does not impose any new obligations on Air Canada. The bill maintains the status quo by making Air Canada's new corporate structure following bankruptcy subject to the same requirements as previous incarnations of the airline.

There has been considerable controversy over official language requirements imposed on Air Canada. Air Canada's obligations were subject to two reviews by parliamentary committees, in 2002 and again in 2004.

In February 2002, the Standing Joint Committee on Official Languages tabled a report entitled *Air Canada: Good Intentions Are Not Enough!*⁽⁹⁾ The report made 16 recommendations to ensure Air Canada's compliance with the OLA. Among the recommendations were proposals that Air Canada be provided with federal government financial assistance for language training and that the *Air Canada Public Participation Act* be amended so that the OLA would take precedence over collective agreements. The Canadian Alliance members of the committee issued a minority report that concluded that official language

(9) Standing Joint Committee on Official Languages, *Air Canada: Good Intentions Are Not Enough!* February 2002, available online at:
<http://www.parl.gc.ca/InfoComDoc/37/1/LANG/Studies/Reports/langrp04-e.htm>.

requirements hampered Air Canada's ability to compete with other airlines, and recommended that all OLA provisions be removed from the *Air Canada Public Participation Act*.

In 2004, the House of Commons Standing Committee on Official Languages again heard witnesses on official language issues related to Air Canada. In testimony before the committee, Air Canada claimed that the official language requirements were problematic in a number of ways:

- Air Canada said that following its merger with Canadian Airlines, the airline was obligated to comply with official language requirements while simultaneously providing job security for its mostly unilingual Canadian Airlines employees. Air Canada found language training for unilingual employees to be costly,⁽¹⁰⁾ and complained that its obligations to comply with the OLA were often inconsistent with seniority provisions in its collective agreements, and with its legal obligations under the *Canada Labour Code*.⁽¹¹⁾
- Officials from the airline stated that the company had spent considerable amounts of time and money to comply with the OLA, and that the playing field should be levelled by making all national airlines in Canada subject to the Act. For example, Air Canada cited the cost of compliance with provisions under Part IV of the OLA, which requires it to advertise in minority press markets, as an additional burden not imposed on its competitors.⁽¹²⁾

Air Canada therefore requested that the Government of Canada act on the recommendations made by the Joint Committee on Official Languages in its 2002 report, and:

- provide the company with the same financial resources as are available to other federal institutions to defray the costs of making the airline more bilingual; and
- enact legislative changes that declare that achieving official language goals takes precedence over seniority provisions in Air Canada's collective agreements, and the *Canada Labour Code*.

In response to this request, some members of the House of Commons committee pointed out that Air Canada knew it would be subject to official language requirements before acquiring Canadian Airlines, and should have factored related costs into the acquisition.⁽¹³⁾

(10) House of Commons Standing Committee on Official Languages, Evidence, 1st Session, 38th Parliament, 25 November 2004, at 0910.

(11) Ibid., at 0915.

(12) Section 30 of the OLA requires bilingual communications with the public. Air Canada cited the cost of minority language advertising, which is required by the OLA even when there is no economic reason to do so, as an example of an unequal playing field. Ibid., at 0920.

(13) Ibid., at 0950.