

**BILL C-7: AN ACT TO AMEND THE AERONAUTICS ACT  
AND TO MAKE CONSEQUENTIAL AMENDMENTS  
TO OTHER ACTS**

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## LEGISLATIVE HISTORY OF BILL C-7

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 29 October 2007

Second Reading: 29 October 2007

Committee Report: 29 October 2007

Report Stage: 29 October 2007

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 39<sup>th</sup> 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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BILL C-7: AN ACT TO AMEND THE AERONAUTICS ACT  
AND TO MAKE CONSEQUENTIAL AMENDMENTS  
TO OTHER ACTS\*

BACKGROUND

Bill C-7, An Act to amend the Aeronautics Act and to make consequential amendments to other Acts, was previously introduced in the 1<sup>st</sup> Session of the 39<sup>th</sup> Parliament as Bill C-6. Pursuant to a motion adopted by the House on 25 October 2007, Bill C-7 was reinstated at third reading in the House of Commons. The bill is very similar in most respects to the predecessor of Bill C-6, Bill C-62, An Act to amend the Aeronautics Act and to make consequential amendments to other Acts, which was introduced in the House of Commons on 28 September 2005 (1<sup>st</sup> Session, 38<sup>th</sup> Parliament). That bill died on the *Order Paper* with the dissolution of Parliament, without having gone beyond first reading. Department officials from Transport Canada say the substantial amendments to the *Aeronautics Act* (the Act) contained in Bill C-7 are necessary to improve aviation safety and to bring the Act in line with other transportation Acts that have recently been updated.

Key amendments to the *Aeronautics Act* proposed in Bill C-7 include the following:

- additional regulation-making powers in areas such as aircraft emissions control and the mitigation of the effects of personnel fatigue, as well as safety management systems for holders of Canadian aviation documents;
- new powers, comparable to those of the Transportation Accident Investigation and Safety Board, for the Canadian Forces Airworthiness Investigative Authority to investigate aviation incidents and accidents involving both military personnel and civilian contractors;

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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.

- provisions to encourage employees of Canadian aviation document holders to report safety concerns voluntarily without fear of legal or disciplinary action;
- provisions to allow for more self-regulation in low-risk areas of the aeronautics industry (e.g., crop spraying); and
- additional tools for the Minister of Transport (Minister) to ensure compliance and increased penalties for contraventions.

Bill C-7 also reflects the amendments the House of Commons Standing Committee on Transport, Infrastructure and Communities (House Committee) had agreed upon in the 1<sup>st</sup> session of the 39<sup>th</sup> Parliament. Among other things, these amendments do the following:

- declare the primacy of the *Canada Labour Code* over the Act in the event of an inconsistency;
- oblige the Minister to hold aeronautical activities to the highest safety and security standards and to maintain oversight and surveillance of aviation safety;
- increase the Minister's regulation-making powers with respect to safety management systems; and
- increase the Minister's regulation-making powers with respect to designated organizations and postpone for three years the coming into force of the designation provisions.

Major amendments introduced by the House Committee are noted in the following section.

## DESCRIPTION AND ANALYSIS

A great number of the amendments proposed in this bill may be described as technical or editorial. For example, some clauses amend only the English or French versions of the Act, and numerous others are consequential to proposed amendments to definitions. The following clauses propose no substantive change to current practice or contain amendments that are solely editorial in nature and are omitted from the analysis: 3, 18, 20, 22, 23, 24, 25, 26, 27, 29, 30, 34 and 39. Other clauses may contain both editorial and substantive changes, but only the substantive amendments are discussed.

#### A. Interpretation (Clauses 1-2)

Clause 1 makes amendments to the definitions in section 3 of the Act. For example, it broadens the definition of “aircraft,” narrows the definition of “commercial air service,” and adds new definitions for the terms “fractional ownership,” “instrument” and “violation.” The definition of “Minister” is amended to allow the Governor in Council to appoint any minister as the Minister for the purposes of this Act. Although the current definitions have not presented any administrative or compliance difficulties to date, the amendments to definitions in this bill are proposed for additional clarity or are viewed as necessary given other amendments to the Act. The House Committee added a definition for “management system.”

Clause 2 adds a new section to the Act – 3.1 – which is a purpose statement for the Act. The purpose statement was drafted in response to a desire by stakeholders to have the Minister’s safety and security mandate emphasized. Specific objectives highlighted in the purpose statement are as follows:

- promoting and providing for aviation safety and security;
- recognizing the responsibilities of those regulated under the Act for the safety and security of their activities under the Act;
- cooperation in the development of modern, flexible and efficient policies, programs and laws to continue improvements in aeronautical safety and security;
- the establishment of the appropriate compliance and enforcement processes; and
- ensuring that Canada meet its international obligations relating to aeronautical activities.

The House Committee added new section 3.2 to clause 2 to clearly establish the primacy of the *Canada Labour Code* in the event of an inconsistency between it and the Act.

This purpose clause is intended to be consistent with the purpose stated in the *Railway Safety Act* and the *Canada Shipping Act, 2001* and to apply also to the Minister of National Defence for military aeronautical activities.

## B. Responsibilities of the Minister (Clauses 4-5)

Clause 4 makes multiple amendments to section 4.2 of the Act, which describes ministerial responsibilities. The majority of the amendments are intended to clarify the legislation and to make it consistent with actual practice. For example, the relationship between some ministerial responsibilities and the authority of NAV Canada is identified by proposing that some provisions be subject to section 10 of the *Civil Air Navigation Services Commercialization Act*. In addition, this clause specifies that the Minister cannot conduct investigations for the purpose of making findings related to the causes and contributing factors of an accident or incident, in order to avoid overlap with the mandate of the Transportation Accident Investigation and Safety Board. Clause 4 also adds a new section – 4.2(3) – which refers to a new Part II of the Act and gives the Minister of National Defence the authority to be involved in investigations of military-civilian occurrences. The Airworthiness Investigative Authority, to be designated by the Minister of National Defence, will carry out the investigations. This amendment is driven by the increasing use of civilian contractors in military aviation and the Minister of National Defence’s lack of adequate legal authority to deal with civilians in the case of incidents and accidents in these situations. The House Committee amended the portion of section 4.2 of the Act before paragraph (a) to add to the Minister’s other responsibilities described in this section an obligation to require that aeronautical activities meet the highest safety and security standards. Also, the House Committee added new section 4.2(1.1), which requires the Minister to “maintain a program for the oversight or surveillance of aviation safety in order to achieve the highest level of safety established by the Minister.”

Clause 5 adds a new section – 4.31 – which allows a person authorized by the Minister of National Defence to perform the duties, powers or functions relating to airworthiness to subdelegate them to another person. This provision is meant to confer some flexibility to the Department of National Defence in its new role respecting military–civilian aviation.

## C. Charges (Clauses 6-7)

Clause 6 of the bill amends existing section 4.4(6), which describes appropriate security for payment of charges for facilities or services provided on behalf of the Minister. It also adds new sections – 4.4(6.1) to (6.3) – that describe a new compliance mechanism to motivate those who owe charges to the Minister to pay them. In effect, these amendments



broaden the application of the provisions beyond owners and operators of aircraft (e.g., including facility owners and service providers) and authorize the Minister to suspend or refuse to issue, renew or amend Canadian aviation documents while payment is outstanding. These provisions are expected to reduce the costs incurred by the Minister in dealing with outstanding charges.

Clause 7 amends existing section 4.5, which describes the Minister's right to seek an order of the court to seize and detain the assets of a person who has not yet paid charges owing. It clarifies that the Minister may seek to obtain an order whether or not proceedings related to the charge have begun. Currently the provision reads as if the proceedings must be completed with a judgment before the Minister can use the authority and process provided in section 4.5.

#### D. General Regulatory Powers (Clauses 8-9)

Clause 8, in addition to making changes of an editorial nature, also makes substantive amendments to section 4.9, which describes the general regulatory powers of the Governor in Council with respect to aeronautics. Among the substantive amendments are new authorities to explicitly regulate the following:

- aircraft emissions, in order to comply with international standards;
- the certification of persons other than air carriers who operate aircraft to transport passengers, due to the rise in corporate travel on larger aircraft;
- mitigation of the effects of personnel fatigue among additional categories of workers; measures include limiting hours of service; and
- the minimum amount of liability insurance to be held by operators of aerodromes and related facilities, by providers of services related to aeronautics and by the owners and operators of aircraft.

The House Committee gave the Governor in Council additional regulation-making authority under new section 4.9(c.1). This section allows the Governor in Council to make regulations respecting safety management systems and programs that provide for the following:

- the appointment of executives responsible under the Act and accountable for a safety management system;
- the implementation of remedial action required to maintain the highest level of safety;

- the monitoring and assessment of the level of safety achieved; and
- employee involvement in the development, implementation and operation of the safety management system or program.

Clause 8 also repeals sections 4.9(p), (q) and (r), which are related to the Governor in Council's regulation-making authorities dealing with aircraft accident investigations for the purpose of making findings related to the causes and contributing factors of an aircraft accident or incident (see clause 4).

Clause 9 reinstates sections 4.9(p), (q) and (r) in a new section – 4.901 – and clarifies that they apply only to investigations undertaken by the Minister of National Defence.

Clause 10 amends section 4.91(1) in order to allow the Governor in Council to make regulations authorizing the Minister to order NAV Canada to *introduce* civil air navigation services where safety warrants. Currently, section 4.91(1) only enables the Governor in Council to make regulations for the purpose of authorizing the Minister to order NAV Canada to *maintain* or *increase* the civil air navigation services that NAV Canada already provides.

Clause 11 replaces section 5 of the Act, which currently contains regulation-making powers with respect to fatigue and liability insurance. As this provision was relocated to section 4.9 by Clause 8, the proposed new text of section 5 describes the manner in which notices and other documents must be served under the Act. It is meant to be a general provision relevant to all sections of the Act that discuss the service of a notice or other document. Clause 11 also amends the text of section 5.1, which currently permits the Minister or a person authorized by the Minister to close airspace for the security and protection of the public and was invoked on 11 September 2001. The amended text broadens the scope of reasons for which the airspace may be closed to include reasons of public interest.

Clause 12 introduces new sections (5.31 to 5.398) that contain provisions relating to two of the more significant objectives of this bill, which are to

- designate aeronautical industry organizations to oversee their members' operations in low-risk areas (e.g., crop spraying); and
- prescribe the management systems that holders of Canadian aviation documents must implement if regulations are made to that effect.

## E. Designated Organizations (Clause 12)

By delegating certain oversight powers to designated aeronautical organizations, Transport Canada hopes to focus its limited resources on the higher-risk segments of the aeronautical industry. The provisions intended to allow for this change are as follows:

- A new section – 5.31 – authorizes the Minister to designate organizations that meet conditions prescribed by regulation and give them a certificate describing their subsequent powers, duties and functions, as well as terms and conditions. Designated organizations may be certified to establish standards of certification and rules governing aeronautical activities, as well as to monitor compliance.

The House Committee amended section 5.31 by setting out two specific conditions for designation in addition to any condition prescribed in regulation. In order to be designated, an aeronautical organization must have:

- an aeronautical safety study showing that the organization's activities represent a low level of risk in relation to aviation safety and security; and
- no involvement in the transportation of fare-paying passengers.

The House Committee also added:

- A new section – 5.31(1.2) – which requires the Minister to provide a list of designated organizations to Parliament each year.
  - A new section – 5.31(7) – which requires the Minister to maintain a program for the oversight and surveillance of the aeronautical activities of holders of certificates of designation.
  - A new section – 5.31(8) – which calls for the review and approval of the organization's standards and rules by the Minister in order for the designated organization to exercise its powers, duties and functions under 5.31(2).
- A new section – 5.32 – establishes that an applicant who is unsuccessful in obtaining or renewing a certificate, approval or authorization from a designated organization may apply to the Transport Tribunal for a review of decisions respecting technical safety and security but not for non-payment of charges. The section describes the Tribunal process to be followed, resulting either in confirmation of the decision of the designated organization or referral of the matter to the Minister for consideration. The Tribunal process for certificates awarded by the designated organization is similar to the one currently in place for appeals of decisions respecting Canadian aviation documents.
  - A new section – 5.33 – provides that the applicant may appeal the Tribunal's decision only if he or she attends the review hearing or has a good reason for missing it. The Tribunal can either dismiss the appeal or refer it to the Minister for consideration.
  - A new section – 5.34 – states that the Minister can confirm, revise or rescind the designated organization's decision in the interest of aeronautical safety and security.
  - A new section – 5.35 – allows the designated organization to recover the costs of exercising its powers, duties and functions through charges.

- A new section – 5.36 – requires the designated organization to consult with affected persons when it wishes to establish or revise standards, rules or charges. The information must be published on the Internet and print copies must be available in the organization's offices.
- A new section – 5.37 – allows affected parties to ask the Minister to review published charges. The Minister's decision is final and he or she may direct the designated organization to amend the charge and refund any overpayment.
- A new section – 5.38 – grants the Governor in Council the regulation-making powers required to implement sections 5.31 to 5.37. The powers include prescribing the criteria a designated organization must meet and the charging principles with which it must comply. Regulations under this section will be developed in consultation with stakeholders through the Canadian Aviation Regulation Advisory Council.

#### F. Review (Clause 12)

- A new section – 5.381 – was added by the House Committee requiring that sections 5.31 to 5.38 be referred to the committee in each House of Parliament that normally considers air transportation matters three years after their coming into force. Each committee is to commence its review as soon as is practicable and report its recommendations respecting these sections to Parliament within six months.

#### G. Management Systems (Clause 12)

- A new section – 5.39 – allows the Governor in Council to make regulations that will affect the holders of Canadian aviation documents. Holders may be required by regulation to establish and implement management systems, or designate persons to do it on their behalf, and can expect reviews and audits of these systems. Management systems may include the promotion of a safety policy and culture within the organization; documentation; staff training and proficiency procedures; risk management; incident reporting procedures; and internal audit and review requirements. Some aspects of management systems are already required of some Canadian aviation document holders by virtue of the *Canadian Aviation Regulations*.
- A new section – 5.3901 – was added by the House Committee requiring the Minister to carry out inspections of the aeronautical activities of those holders of Canadian aviation documents required to have a management system.
- A new section – 5.391 – gives the Minister an alternative to suspending a Canadian aviation document or imposing a monetary penalty if the holder's management system is found to be deficient. It gives the Minister the authority to order that deficiencies leading to unacceptable risks be rectified, which is thought to be a less disruptive measure to take than suspension.
- A new section – 5.392 – ensures the confidentiality of information provided to the Minister as a result of a process under a Canadian aviation document holder's management system. Under certain circumstances the Minister may disclose the information without the consent of the employer or employee, but the information may not be used against the employer or employee. In drafting this provision, the department intended to balance the need for holders of Canadian aviation documents to have internal processes that encourage reporting safety

concerns without self-incrimination against the authority of the Minister to use the information when it comes into his or her possession. Currently there are no provisions to protect the confidentiality of self-incriminating information when it comes into the possession of the Minister.

The House Committee further clarified, under the new section 5.392(3), that a Canadian aviation document holder shall not use information disclosed under the management system in disciplinary proceedings against the employee who disclosed the information other than in accordance with the management system. It also added section 5.392(4) to protect an employee who disclosed information in good faith under a management system against reprisals, including measures that adversely affect them, the employee's employment, or working conditions, from the Canadian aviation document holder.

- A new section – 5.393 – mirrors section 5.392, except that it refers to information normally derived from a flight data recorder by the aircraft owner and that might become available to the Minister. In drafting this section, the department intended to encourage the collection, analysis and use of flight data recorder information by aircraft owners by ensuring that it generally would be confidential if it became available to the Minister.

The House Committee added section 5.393(3), which prohibits an aircraft owner from using flight data recorder information collected through the management system process in disciplinary proceedings against any of its employees except in accordance with the management system process.

#### H. Flight Data Analysis Agreements (Clause 12)

- A new section – 5.394 – provides that the Minister may enter into agreements with aircraft operators respecting the collection, analysis, use and disclosure of flight data recorder information. Such agreements would be entered into for the purpose of using the data to revise regulatory requirements, to share with other operators and to enhance flight safety. Currently there is a voluntary program for the sharing of information derived from flight data recorders.

The House Committee added text to this section requiring that, before entering into such an agreement, the Minister consult with the operator's employees who would be affected by the agreement.

#### I. Voluntary Reporting (Clause 12)

- New sections (5.395 to 5.398) set up the legislative framework for a voluntary reporting program for information on contraventions relating to aviation safety or security. Persons who report such information are provided with conditional confidentiality protections and enforcement immunities. For example, immunity does not apply if the reporter has committed a contravention wilfully or has already used the immunity protection under the voluntary reporting program within the preceding two years. The limits on how the

information may be used are described in section 5.397, and section 5.398 authorizes the Governor in Council to make regulations related to the implementation of the program.

The House Committee added new section 5.397(5) to prohibit the use of information reported voluntarily under section 5.395 from being used to take any reprisals against employees, including any measure that adversely affects the employee's employment or working conditions.

#### J. Airport Zoning (Clauses 13-17)

Clauses 13 and 14 make both editorial and substantial amendments to section 5.4 of the Act related to airport zoning. The substantial changes include replacing the definitions of airports and references to airports with those of the broader term "aerodrome." For example, clause 13 changes the title of the section to "Aerodrome Zoning." Clause 14 extends the provision conferring the authority to zone to prevent electronic interference to cover lands adjacent to or in the vicinity of "equipment."

Clause 15 amends section 5.6(1) by clarifying how and where aerodrome zoning regulations are to be published.

Clause 16 makes amendments to the sections of the Act that describe how the Minister may enforce zoning regulations. The substantive changes to section 5.7 include adding the word "destroy" to the things the Minister can do to a building, structure or object in contravention of a zoning regulation and allowing the Minister to recover the costs of doing so. Currently the Minister may only remove or alter such things and cannot recover the cost of enforcing the zoning regulation.

Clause 17 broadens the federal government's ability to enter into zoning agreements with provincial authorities in section 5.81. Currently the federal government may enter into agreements with the provinces only for zoning airports that have not already been zoned by the federal government and only for safety purposes. The amendment extends the government's prerogative to make zoning agreements at all aerodromes and adds the power to zone for electrical interference purposes.

Clause 17 also adds new sections – 5.82 through 5.85 – which authorize the Minister to enter onto private lands, with or without the agreement of the owner or lessee of the lands, and to cut and remove natural growth that presents a hazard to aircraft operations at a neighbouring airport. The Minister must consult with the airport operator and compensate the owner or lessee for the resulting reduction in the value of its interest or right in the lands.

The airport operator must reimburse the Minister for the amount of compensation paid. These provisions are necessary because not all natural growth is subject to zoning regulations and not all airports are zoned. The process to be followed if the Minister is unable to reach an agreement with the land owner or lessee is set out in these provisions and mirrors the process in the existing section 5.7(6) by which the Minister is authorized to enter onto lands to deal with zoning contraventions.

K. General Provisions Respecting Regulations, Orders,  
and Security Measures (Clauses 18-20)

Clause 19 adds a new section – 5.91 – to confer the power of the Minister to exempt any person, aeronautical product, aerodrome, facility or services, or classes of the foregoing, from the application of any regulation, order or security measure described in existing section 5.9(2) on the Minister of National Defence, in any matter relating to defence.

L. Boards of Inquiry (Clause 21)

Clause 21 affects the provisions in the Act that authorize the Minister of National Defence to establish a board of inquiry to investigate flight safety. Since the new Part II of the Act (clause 41) establishes the Airworthiness Investigative Authority for this purpose, clause 21 repeals section 6.3 and moves the substance of section 6.4 to the new Part II of the Act.

M. Measures Relating to Canadian Aviation Documents (Clauses 22-31)

Clause 28 makes both editorial and substantive amendments to section 7 of the Act, which describes the Minister's authority to suspend a Canadian aviation document when there is an immediate threat to safety or security, and the document holder's prerogative to file for a review of the decision by the Tribunal. The substantial amendments limit the Tribunal member's decisions to confirmation of the Minister's decision or referral of the decision back to the Minister for reconsideration [section 7(7)] and clarify that the initial suspension remains in effect until after the reconsideration is completed [new section 7(7.1)]. Currently, the Tribunal

may rescind the decision of the Minister to suspend an aviation document even though it is the Minister who is accountable for aviation safety and security.

Clause 31 amends section 7.21 of the Act by adding additional reasons for which the Minister may suspend or refuse to issue, renew or amend a Canadian aviation document. The amended provision refers to the existence of outstanding debt on the part of the Canadian aviation document holder as grounds for the Minister to take such action whereas, currently, the provision does not apply to a court-imposed fine.

#### N. Prohibitions, Offences and Punishment (Clauses 32-34)

Clause 32 increases the fines payable by individuals and corporations convicted of an offence under Part I of the Act. It replaces sections 7.3(3.1) through 7.3(6) with two sections, numbered 7.3(4) and 7.3(5), to make penalties under this Act more consistent with those found in other transport legislation and to make the penalties act as a deterrent. The fine payable by an individual on summary conviction is raised to \$100,000 from \$5,000 and the fine payable by a corporation on summary conviction is raised to \$1 million from \$25,000.

Clause 33 amends section 7.31, which relates to a continuing offence under the Act. Currently, an offence continued or repeated on more than one flight segment is considered a different offence for each flight segment. The proposed amendment extends the provision to *violations* as well as offences under the Act and changes the unit of measure to a day, as some violations and offences will have nothing to do with the operation of aircraft.

#### O. Procedure Pertaining to Certain Contraventions (Clauses 35-36)

Clause 35 is a lengthy clause that introduces new compliance tools by replacing sections 7.6 to 8.2 of the Act and the preceding heading, “Procedure Pertaining to Certain Contraventions.” The replacement sections are preceded by the heading “Administrative Penalties” and are more consistent with the administrative penalties scheme in the *Canada Shipping Act, 2001* and the *Marine Transportation Security Act*.

- Replacement section 7.6 allows the Minister to serve notice of a monetary penalty, enter into an assurance of compliance or serve a notice of violation without penalty when he or she has reasonable grounds to believe that a person has committed a violation. Currently, the Act provides for administrative monetary penalties only when a person has committed a violation.



- New sections (7.61 through 7.64) describe the administration of assurances of compliance including
  - how notices of compliance and default will be served by the Minister (sections 7.61 and 7.62);
  - how requests for review by the Tribunal by the person served with the notice will be filed (7.63); and
  - when the security deposit may be returned to the person served with the notice (7.64).
- New section 7.65 states that persons who enter into assurances of compliance and persons who are served a notice of violation without penalty are deemed to have committed the violation, thereby resulting in an enforcement record. Persons served with a notice of violation without penalty are able to request a review of the facts of the violation by the Tribunal and persons who have entered into assurances of compliance may, within 48 hours of striking the assurance, also request such a review. In this case, the assurance of compliance would be deemed as a notice of a monetary penalty and the new sections (7.67 and 7.68), which describe the Tribunal process and the decision-making authorities, would apply. Sections 7.67 and 7.68 are consistent with current practice.
- A new section – 7.66 – is consistent with current practice and establishes the right of a person served with a notice of a monetary penalty to ask the Tribunal to review the facts of the violation and/or the amount of the penalty.
- A new section (7.69) prevents a person from being penalized more than once for the same suspension or cancellation of a Canadian aviation document under section 6.9 of the Act, offence or violation.
- Replacement section 7.7 clarifies that section 126 of the *Criminal Code* does not apply to violations under the Act.
- Replacement sections 7.8 and 7.9, which are comparable to current provisions, prescribe the process for the collection of money owed by a person against whom administrative enforcement action has been taken under the Act.
- Replacement section 8 is almost identical to current section 7.6 in the Act, which authorizes the Governor in Council to make regulations designating provisions subject to the administrative penalty scheme. The proposed maximum amounts payable are 10 times higher than in the current provisions however; \$50,000 for individuals and \$250,000 for corporations.
- Replacement section 8.1 requires the Minister to publicize the names of persons who contravene a suspension or cancellation of a Canadian aviation document under section 6.9 of the Act, as well as violations and notices of default under section 7.62(1). While some enforcement action is currently publicized and Tribunal proceedings are open to the public, the Act currently has no comparable provision.

Clause 36 amends section 8.3 of the Act, which describes the conditions under which a person may have an enforcement record expunged. Currently, a record cannot be

expunged if a subsequent measure respecting a Canadian aviation document is taken, even if the original enforcement action is very old. The substantial amendment to section 8.3 allows an enforcement record to be expunged on application if there has been a subsequent period of two years during which no notation was made, provided the Minister is satisfied that aviation safety and security are not at risk. The provision is also extended to expunge records:

- of other enforcement actions, such as notations of violation and notations of notices of default; or
- when the Tribunal has overturned a decision or the Minister has rescinded his or her decision on reconsideration.

#### P. Enforcement (Clauses 37-40)

The substantial amendments contained in Clause 37 add aeronautical service providers and operators of facilities relating to aeronautics to the list of persons who may be found vicariously liable for an offence under the Act if it is committed with their consent (see section 8.4). The clause also clarifies that these persons may be found vicariously liable for violations, as violations are made distinct from offences with the proposed amendments in clause 35. Currently, only aircraft owners, aircraft operators, pilots-in-command and aerodrome operators may be found vicariously liable when an offence is committed with their consent.

Clause 38 amends section 8.7(1) of the Act, which describes the Minister's powers to enter premises, seize materials, detain aircraft and operate computer systems and copying equipment in the course of an investigation of compliance with the Act or matters concerning aviation safety. The existing section 8.7(1) remains largely intact in spite of a number of minor, yet substantial, amendments:

- other facilities relating to aeronautics are included in the list of premises that the Minister may enter to investigate;
- aviation security is added as a purpose for entering a premises to investigate; and
- the Minister's authority to detain aircraft is expanded to include situations in which the necessary Canadian aviation documents are absent.

As well, clause 38 introduces a new provision 8.7(1.01), which clarifies that the Minister may exercise these powers only in matters relating to defence with the authorization of the Minister of National Defence. Finally, section 8.7(1.1)(a) clarifies that the Minister is to have access to all electronic means (e.g., data processing system or other computer system) in the administration of this part of the Act.

Clause 40 imports section 28 of the *Canadian Transportation Accident Investigation and Safety Board Act* into a new section (8.9) so that it applies to investigations by the Minister. This provision is intended to ensure the confidentiality of, and legal privileges for, aircraft on-board recordings and is consistent with current departmental policy.

#### Q. New Part II – Military Investigations Involving Civilians (Clause 41)

Clause 41 is a very lengthy clause that adds a new Part II to the Act after section 9, entitled “Military Investigations Involving Civilians.” By and large, new sections 10 through 24 parallel sections of the *Canadian Transportation Safety Board Act* and are described below.

Section 10(1) adds new definitions for “civilian,” “department,” “military-civilian occurrence” and “visiting force” for the purposes of Part II.

Section 10(2) establishes geographical and other limits to military investigations involving civilians. Examples of occurrences subject to investigation are those that take place in or over Canada, in areas under Canadian air traffic control or in any place where Canada is requested to investigate.

Section 11(1) permits the Minister of National Defence to designate an Airworthiness Investigative Authority from the ranks of his or her department or the Canadian Forces and describes the Authority’s responsibilities for advancing military-civilian aviation safety. Its responsibilities include the following:

- investigating military-civilian occurrences to determine their causes and contributing factors;
- identifying safety deficiencies;
- making recommendations to eliminate or reduce the deficiencies; and
- publishing reports on its findings.

Sections 11(2) through (4) parallel the sections of the *Canadian Transportation Accident Investigation and Safety Board Act* [sections 7(2) through (4)] that encourage personnel to voluntarily admit to errors and omissions without fear of sanction. These sections clarify that it is not the function of the Authority to assign fault or to determine civil or criminal liability, nor are its findings binding in disciplinary, legal or other proceedings.

Section 12 parallels section 10 of the *Canadian Transportation Accident Investigation and Safety Board Act* respecting the Airworthiness Investigative Authority's power to designate investigators on its behalf and provide them with a certificate of designation. This section also compels designated investigators to report their findings to the Authority.

Section 13 sets out the powers, and the limitations on the use of these powers, of investigators of military-civilian occurrences and parallels section 19 of the *Canadian Transportation Accident Investigation and Safety Board Act*. If the investigator believes on reasonable grounds that there is or might be, at or in any place, anything relevant to the investigation of a military-civilian occurrence, examples of these powers include the following:

- entering and searching aircraft and premises;
- seizing things and testing them, even to the point of destruction;
- limiting access to investigation areas;
- requiring persons to produce information;
- requiring persons to submit to a medical examination.

Generally, an inspector will need to procure a warrant in the manner described in this section to enter an aircraft or premises without the consent of the person apparently in charge of the place.

Section 14 clarifies that the powers of the investigator outlined in section 13 may be used only in respect of a civilian. Persons subject to the *Code of Discipline* would be dealt with under the military chain of command.

Section 15 parallels section 20 of the *Canadian Transportation Accident Investigation and Safety Board Act* and provides for the timely return of property seized under section 13 to the owner or any person entitled to it, with the exception of things tested to destruction. It also allows such persons to apply to the court for an order that the property be returned.

Section 16 ensures that any department that receives notice of a military-civilian occurrence will contact the Airworthiness Investigative Authority, will permit the Authority's investigator to observe the department's investigation and will permit the Authority to review and comment on any report on the occurrence prepared by the department. This section parallels section 22 of the *Canadian Transportation Accident Investigation and Safety Board Act*.

Section 17 provides that the Airworthiness Investigative Authority will contact the responsible departments if it receives notice of a military-civilian occurrence and will allow an observer from these departments at the Authority's investigation. The Authority may impose conditions on the presence of the observer, however, and remove the observer from the investigation if a condition is contravened. This section parallels section 23 of the *Canadian Transportation Accident Investigation and Safety Board Act*.

Section 18 parallels section 24 of the *Canadian Transportation Accident Investigation and Safety Board Act* and is intended to increase the transparency of the investigation. It describes the process by which the Airworthiness Investigative Authority will eventually make public its investigation findings and recommendations. First, however, a copy of the draft report is to be provided on a confidential basis to persons and departments with a direct interest in the findings, who will then have the opportunity to make representations to the Authority prior to the publication of the final report. The representations will generally be privileged and not permissible in legal, disciplinary or other proceedings, but they may be available to a coroner conducting a related investigation. During the investigation and upon its completion, the Authority will notify departments and persons with a direct interest in the investigation, findings and recommendations of any findings or recommendations that require, in the opinion of the Authority, urgent action. The departments will be required to provide timely public responses to all reports and recommendations (interim and/or final).

Section 19 parallels section 25 of the *Canadian Transportation Accident Investigation and Safety Board Act* respecting interim reports. The Airworthiness Investigative Authority must provide an interim report on a confidential basis to a minister responsible for a department with a direct interest in the subject matter of the investigation. The Authority must also provide an interim report on a confidential basis to a coroner investigating the occurrence if it involved a death and the Authority has made significant progress in the investigation.

Section 20 allows the Airworthiness Investigative Authority to reconsider findings and recommendations at any time and obliges it to reconsider them if new material facts emerge. This section parallels section 26 of the *Canadian Transportation Accident Investigation and Safety Board Act*.

Section 21 allows the Airworthiness Investigative Authority to authorize any person to perform or exercise any of its powers or duties, except the power to authorize, and to revoke the authorization at any time. This section parallels section 27 of the *Canadian Transportation Accident Investigation and Safety Board Act*.

Section 22 deals with the Airworthiness Investigative Authority's access to on-board recordings and describes under what circumstances and with whom the Authority may share these otherwise privileged data sources. First it defines "on-board recording" and then it clarifies that, except as provided by this section, no person will be required to testify on or produce evidence from an on-board recording in any legal, disciplinary or other proceeding. This section provides the Authority with access to on-board recordings relating to military civilian occurrences under investigation and the power to share them with the following:

- a coroner for the purposes of the coroner's investigation;
- any person carrying out a coordinated investigation under section 18 of the *Canadian Transportation Accident Investigation and Safety Board Act*;
- a board of inquiry convened by the Minister of National Defence.

However, the production of an on-board recording may be ordered during court or coroner proceedings if it is determined that the public interest outweighs the importance of the privilege attached to the recording. Section 22 also states that an on-board recording may not be used against various persons, including air traffic controllers, aircraft crew members and airport vehicle operators, in disciplinary proceedings. This section parallels section 28 of the *Canadian Transportation Accident Investigation and Safety Board Act*.

Section 23 defines "communication record" and prohibits the use of communication records obtained during the course of an investigation of a military-civilian occurrence against various persons, including air traffic controllers, aircraft crew members and airport vehicle operators, in legal or disciplinary proceedings. This section parallels sections 29(1) and (6) of the *Canadian Transportation Accident Investigation and Safety Board Act*.

Section 24 deals with the Airworthiness Investigative Authority's access to statements and states under what circumstances and with whom the Authority may share them. First it defines "statement" and then sets out under what circumstances the statement and the

identity of the author are privileged. The Authority may use any statement as he or she considers necessary in the interest of aviation safety but shall only make statements available to

- a coroner for the purposes of investigation on request; and
- any person carrying out a coordinated investigation under section 18 of the *Canadian Transportation Accident Investigation and Safety Board Act*.

A court (including a public inquiry into a military-civilian occurrence) or coroner may order the production of a statement if it is determined that the public interest outweighs the importance of the privilege this section attaches to the statement. Finally, a statement may only be used against the person who made it in legal or disciplinary proceedings in the prosecution of perjury, for giving contradictory evidence or for prosecution under the new section – 24.5. This section parallels section 30 of the *Canadian Transportation Accident Investigation and Safety Board Act*.

Section 24.1 contains provisions to establish mandatory and voluntary programs for civilians to report military-civilian occurrences. In parallel to section 31 of the *Canadian Transportation Accident Investigation and Safety Board Act*, this section

- gives the Governor in Council, on the recommendation of the Minister of National Defence, the power to make regulations respecting the establishment and administration of civilian reporting;
- allows the Airworthiness Investigative Authority to use the reports in the interests of aviation safety;
- establishes that the reports and the identity of the civilian are privileged where provided for in the regulations; and
- prevents reports being used against civilians whose identity is protected by the regulations in legal, disciplinary and other proceedings.

Section 24.2 generally prevents the Airworthiness Investigative Authority or inspectors from testifying before a court or other proceedings, with the exceptions of a coroner's proceedings or where the body conducting the proceedings so orders for special cause. This section parallels section 32 of the *Canadian Transportation Accident Investigation and Safety Board Act* and is intended to protect the integrity of the military flight safety program.

Section 24.3 limits what is admissible for the Airworthiness Investigative Authority or inspectors to give as evidence in legal, disciplinary or other proceedings to their *observations*, rather than their opinions. This section parallels section 33 of the *Canadian Transportation Accident Investigation and Safety Board Act* and is intended to protect the integrity of the military flight safety program.

Section 24.4 sets out the regulations the Governor in Council may make on the recommendation of the Minister of National Defence in order to conduct investigations of military-civilian occurrences under Part II of the Act. Among other things, the Governor in Council may make regulations respecting the following:

- the powers, duties and functions of the investigators;
- keeping and preserving all kinds of evidence relating to a military-civilian occurrence; and
- defining the sites of such an occurrence and prescribing rules to protect them.

To improve transparency and accountability, these regulations must be published in the *Canada Gazette* at least 60 days before the proposed effective date and representations must be permitted. Regulations not substantially different from existing regulations, or those that have been previously published, are exempted from this process. This section parallels section 34 of the *Canadian Transportation Accident Investigation and Safety Board Act* and is intended to protect the integrity of the military flight safety program.

Section 24.5, which parallels section 35 of the *Canadian Transportation Accident Investigation and Safety Board Act*, describes what are considered to be indictable and summary offences in the administration of this Part of the Act.

Section 24.6 is intended to ensure evidentiary fairness in the prosecution of offences under this Part. It provides that investigators' reports and documents certified by investigators may be used as evidence only if the alleged offender is provided with notice and copies of the documents at least seven days in advance of the prosecution. Furthermore, the party against whom the document is produced may cross-examine the investigator. This section parallels section 36 of the *Canadian Transportation Accident Investigation and Safety Board Act*.



Section 24.7 states that sections relating to on-board recordings (section 22), communication records (section 23), statements (section 24), and reporting by civilians (section 24.1) also apply (with necessary modifications) to other investigations of the Airworthiness Investigative Authority, such as those of purely military occurrences. Currently, provisions in the Act respecting military boards of inquiry make reference to some of the sections of the *Canadian Transportation Accident Investigation and Safety Board Act* that parallel these proposed new sections.

#### R. Prosecution (Clause 42)

Clause 42 substantially amends the existing section 26 of the Act by revising the limitation period for judicial and administrative proceedings following a contravention. It establishes the same general limitation period (12 months) that will apply to any kind of proceedings the Minister may choose to deal with the contravention. It also allows for proceedings to start after the limitation period expires in certain cases to be established in regulations, such as those where latent contraventions are revealed by an audit that takes place more than 12 months after the contraventions. Currently, there is no limitation period for contraventions leading to the suspension or cancellation of Canadian aviation documents and there is no provision to extend the limitation period for latent contraventions.

The House Committee added a new section (section 29) to the Act under clause 42. Section 29 permits the appropriate committee of the House of Commons to review any of the regulations made under the Act, either on its own initiative or on receiving a written complaint, and to table a report on its finding in the House of Commons.

#### S. Consequential Amendments (Clauses 43-46)

Clause 43 makes consequential amendments to the *Access to Information Act* to prevent the disclosure of information collected as a result of the new voluntary reporting programs in clause 12.

Clause 44 makes consequential amendments to section 180(2) of the *Canada Transportation Act* to ensure that the proposed amendments to the Act are properly referenced.

Clause 45 adds a reference to the Airworthiness Investigative Authority in section 18(4) of the *Canadian Transportation Accident Investigation and Safety Board Act* to ensure that the Transportation Safety Board takes all measures to coordinate joint investigations.

Clause 46 changes the reference to the Act in the definition of “air traffic controller” in the *Public Service Superannuation Act* because the existing reference is to a section that is no longer in effect.

#### T. Transitional Provisions (Clauses 47-48)

Clauses 47 and 48 provide that ongoing investigations and completed investigations for which reports have not yet been issued regarding military-civilian and military-only occurrences, respectively, will follow the provisions of new Part II of the Act upon its coming into force.

#### U. Coming Into Force (Clause 49)

Clause 49 states that the provisions of the Act come into force on the day or days fixed by order of the Governor in Council. The House Committee amended clause 49 to postpone the coming into force of the designation provisions (sections 5.31 to 5.38) until three years after the bill receives Royal Assent.

### COMMENTARY

Departmental officials have stated that the proposed amendments in what is now Bill C-7 bring the Act in line with recently amended transportation legislation and are the result of years of consultations. During the consultations, stakeholders showed some opposition to the proposed increases in monetary sanctions and the expanded regulatory authorities. Concern was also expressed about employees’ rights and the confidentiality of safety-related data.

During and after debate in the House of Commons, both the New Democratic Party and the Bloc Québécois had specific criticisms of the legislation. During the debate at second reading, a member from the Bloc Québécois claimed that the party would accept the bill only if Transport Canada assured the party that the department’s monitoring and inspection regime would not be diminished as self-regulation increased. In a statement on the party’s

website, a New Democratic Party member called for the withdrawal of the bill, asserting that it “greatly reduce[d] the government’s accountability to Canadians who travel by air.”

The House Committee convened 17 meetings during its study of what is now Bill C-7 and heard many witnesses, including representatives of 16 stakeholder groups, Transport Canada and the Department of National Defence, and some individuals. Although a few witnesses expressed support for the bill without reservation, many others, including those who voiced support for bill generally, had concerns about one or more elements of the bill. Some concerns that were expressed by more than one witness pertained to the following issues:

- whether the *Canada Labour Code* would take precedence over management system processes;
- the lack of whistle-blower protection for employees under management systems;
- the insufficient protection of air carrier safety data and, alternatively, the lack of transparency with respect to air carrier safety data;
- the designation of aeronautical organizations generally and, more specifically, the designation of organizations whose activities involved commercial passenger and cargo operations;
- whether management systems were a substitute for the federal regulation of Canadian aviation document holders and whether their monitoring or evaluation by the federal regulator would be adequate to avert any compromise to aviation safety.

The House Committee amendments attempted to address a number of these concerns. For example, amendments were passed to state the primacy of the *Canada Labour Code* (clause 2) and to codify the Minister’s responsibility to maintain a program of oversight or surveillance of aviation safety (clause 4). Although whistle-blower protection was not introduced, the House Committee agreed to add a number of new provisions to the bill that provide additional protection for employees who provide information under management systems and voluntary reporting processes (clause 12). The House Committee also introduced new conditions on the designation of aeronautical organizations, including the ineligibility (for designation) of an organization involved in the transportation of fare-paying passengers (clause 12).