

**BILL C-44: AN ACT TO AMEND THE  
CANADA POST CORPORATION ACT**

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## LEGISLATIVE HISTORY OF BILL C-44

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 17 June 2009

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 2<sup>nd</sup> Session of the 40<sup>th</sup> Parliament ended on 30 December 2009.**

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

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## CONTENTS

	<b>Page</b>
BACKGROUND .....	1
DESCRIPTION AND ANALYSIS .....	3
A. Exclusive Privilege of the Corporation .....	3
COMMENTARY .....	3



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BILL C-44: AN ACT TO AMEND THE CANADA POST CORPORATION ACT\*

BACKGROUND

On 17 June 2009, Bill C-44, An Act to amend the Canada Post Corporation Act, was introduced in the House of Commons by the Minister of Transport, Infrastructure and Communities, the Honourable John Baird. This Bill is identical to Bill C-14, An Act to amend the Canada Post Corporation Act, which was introduced in the 2<sup>nd</sup> Session of the 39<sup>th</sup> Parliament and which died on the *Order Paper* when Parliament was dissolved on 7 September 2008. Bill C-44 clarifies Canada Post's statutory monopoly on mail delivery and allows other parties to deliver letter mail addressed to recipients located outside of Canada.

The *Canada Post Corporation Act*<sup>(1)</sup> (CPCA) was enacted in 1981 as the successor to a series of statutes that had governed Canadian postal services since Confederation. The CPCA removed postal operations from a department of government, under the Postmaster General, to Canada Post, a Crown corporation. According to the CPCA, the object of the Canada Post Corporation is to operate a financially self-sustaining universal postal service throughout Canada that will meet the needs of the people of Canada.<sup>(2)</sup> In section 5 of the CPCA, postal service is defined as the “collection, transmission and delivery of messages, information, funds and goods both within Canada and between Canada and places outside Canada.”

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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.

(1) R.S.C. 1985, c. C-10.

(2) CPCA, s. 5.

To provide universal postal service throughout Canada, Canada Post is granted a monopoly for certain classes of letters and for certain mail activities. Letters covered by the monopoly include mail weighing under 500 grams that is specifically addressed to a recipient and that is not excluded in the *Letter Definition Regulations*.<sup>(3)</sup> The specific activities covered by the monopoly are found in sections 14 and 15 of the CPCA under the “Exclusive Privilege of Corporation” heading.<sup>(4)</sup> Section 14(1) states that Canada Post “has the sole and exclusive privilege of collecting, transmitting and delivering letters to the addressee thereof within Canada.”<sup>(5)</sup> Activities exempted from this monopoly are found in section 15 of the CPCA and include personal delivery without payment by various entities, legal documents issued by a court of justice, letters lawfully brought into Canada for subsequent postage, express mail for a fee that is more than three times the postage rate of letters weighing under 50 grams delivered by Canada Post, intra-office mail in an organization, letters delivered by electronic or optical means, and letters delivered by foreign military forces in Canada with the consent of the Government of Canada.

Remail is a cross-border letter mail service provided by private companies, usually in conjunction with a foreign postal administration.<sup>(6)</sup> Recently, Canadian remailers have contested Canada Post’s monopoly over the delivery of letter mail destined for foreign recipients.<sup>(7)</sup> (These remailers are predominantly small Canadian companies working with affiliates of foreign postal administrations that collect letter mail in Canada and transport it to other countries where it is processed and remailed.) At issue was the interpretation of the French version of the exclusive privileges in section 14(1) of the CPCA and whether or not this

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(3) S.O.R./83-481 specifies that material excluded from this monopoly includes magazines, books, bulk mail, electronically or optically transmitted material, and urgent letters subject to a fee at least equal to three times the regular rate of postage payable for delivery in Canada of similarly addressed letters weighing 50 grams.

(4) CPCA, ss. 14-15.

(5) CPCA, s. 14(1).

(6) See “Europe’s Postal Monopolies: Neither Snow Nor Rain, Nor Fax ...,” *The Economist*, 29 September 1990, p. 83, and C.J. Zepos, “Liberalizing the ‘Sacred Cows’: Telecommunications and Postal Services in the EC,” *Duke Journal of Comparative & International Law*, Vol. 3, No. 202, 1992, p. 227.

(7) See *Canada Post Corp. v. Key Mail Canada Inc.* (2005), 259 D.L.R. (4th) 309 (Ont. C.A.) [*Key Mail*] and *Canada Post Corp. v. G3 Worldwide (Canada) Inc.* (2007), 85 O.R. (3d) 241 (Ont. C.A.) appeal to the Supreme Court of Canada dismissed 1 November 2007 (Docket 32093).

provision granted Canada Post a monopoly over the delivery of letters to foreign destinations.<sup>(8)</sup> During these cases the courts have sided with Canada Post and have held that the French version of section 14(1) of the CPCA is the correct interpretation. Thus, Canada Post has the exclusive privilege of transmission and delivery of letters to all destinations, including locations outside of Canada.<sup>(9)</sup> Bill C-44 overrules the Court decision on this matter, ensuring competition between remailers and Canada Post within the bulk international mail market.<sup>(10)</sup>

## DESCRIPTION AND ANALYSIS

### A. Exclusive Privilege of the Corporation

Clause 1 of Bill C-44 amends section 15 of the CPCA by adding an additional restriction on Canada Post's monopoly powers. Specifically, the exclusive privilege referred to in section 14 does not include outgoing international letters.

## COMMENTARY

The traditional argument for a postal monopoly over various types of mail delivery is that open competition of certain sectors may hinder Canada Post's ability to provide universal postal service<sup>(11)</sup> in Canada at a reasonable cost.<sup>(12)</sup> In December 2008 a government

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(8) The French version of section 14(1) is as follows: "Sous réserve de l'article 15, la Société a, au Canada, le privilège exclusif du relevage et de la transmission des lettres et de leur distribution aux destinataires."

(9) See *Key Mail*, paras. 8–13.

(10) See Canadian International Mail Association [CIMA], "CIMA Congratulates the Federal Government on Introduction of Legislation to Amend the Canada Post Corporation Act," News release, Ottawa, 31 October 2007, <http://www.newswire.ca/en/releases/archive/October2007/31/c2144.html>.

(11) Universal postal service or universal service obligations are not defined in the CPCA. However, subsection 5(2) of the CPCA states that Canada Post provides "basic customary postal service." Universal service obligations are defined at Transport Canada, *Canada Post Corporation Strategic Review – Report of the Advisory Panel*, December 2008, p. 42, <http://www.cpcstrategicreview-examenstrategiquescp.gc.ca/finalreport/rpt-eng.pdf>.

(12) See CPCA, s. 5, and *Key Mail*, para. 19. A 1985 *Report of the Review Committee on the Mandate and Productivity of Canada Post Corporation* also stated that selective competition will likely lead to the private sector's choosing the most profitable routes and Canada Post's becoming the carrier of last resort (Minister of Supply and Services Canada, 1985).

advisory panel completed its strategic review<sup>(13)</sup> of the Canada Post Corporation and recommended that “outbound international mail be open to competition, as has been the practice (if not the law), as a step towards the liberalization of postal markets that is unfolding internationally.”<sup>(14)</sup> Open competition for outbound international mail is evidenced by the private “re-mailers,” which have been operating in Canada for the past 20 years.<sup>(15)</sup>

The European Community has attempted to ensure universal postal service throughout its member countries by granting monopolies to national postal administrators while liberalizing or opening competition to certain areas of postal service.<sup>(16)</sup> One area that has been gradually liberalized within Europe by Directive 2002/39/EC is cross-border letter mail (or remailing) for certain classes of mail.<sup>(17)</sup> The goal of this directive is to promote cross-border letter mail while ensuring universal postal service by national postal administrations. The maintenance of national universal postal service has been achieved by various methods, including a compensation fund and licensing of remailers through national regulatory authorities.<sup>(18)</sup> Full liberalization of remailing has not yet been implemented throughout the European Union.<sup>(19)</sup> Open competition in remailing and other areas of postal service have also resulted in greater innovation by incumbent national postal administrators in Europe.<sup>(20)</sup>

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(13) *Canada Post Corporation Strategic Review*.

(14) The Canadian Union of Postal Workers, the union formed by Canada Post employees, has been opposed to deregulation in general, because it may lead to decreased rural mail service. See Canadian Union of Postal Workers, *Campaign to Stop Closures, Privatization and Deregulation at Canada Post*, [http://www.publicpostoffice.ca/index.cfm/ci\\_id/6468/la\\_id/1.htm](http://www.publicpostoffice.ca/index.cfm/ci_id/6468/la_id/1.htm).

(15) CIMA (2007).

(16) See European Parliament and Council of the European Union, Directive 2002/39/EC, 10 June 2002, amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0039:EN:NOT>. For a review of the EC policy to liberalize certain areas of postal service see Zepos (1992).

(17) CIMA (2007).

(18) European Parliament (2002).

(19) See European Commission, *EU Postal Legislation*, [http://ec.europa.eu/internal\\_market/post/legislation\\_en.htm](http://ec.europa.eu/internal_market/post/legislation_en.htm). All member states will be fully liberalized by 2012.

(20) See E.M. Iacobucci, Michael J. Trebilcock and Tracey D. Epps, *Rerouting the Mail: Why Canada Post is Due for Reform*, C.D. Howe Institute, *Commentary*, No. 243, February 2007, [http://www.cdhowe.org/pdf/commentary\\_243.pdf](http://www.cdhowe.org/pdf/commentary_243.pdf).