



LEGISLATIVE SUMMARY



Bill C-42: An Act to amend the Aeronautics Act

Publication No. 40-3-C42-E
28 June 2010
Revised 8 March 2011

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Legislative Summary of Bill C-42

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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.

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

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LEGISLATIVE SUMMARY OF BILL C-42: AN ACT TO AMEND THE AERONAUTICS ACT

1 BACKGROUND

On 17 June 2010, the Minister of Transport, Infrastructure and Communities introduced Bill C-42, An Act to amend the Aeronautics Act (short title: Strengthening Aviation Security Act). **The bill received second reading on 26 October 2010 and was referred to the House of Commons Standing Committee on Transport, Infrastructure and Communities, where it was passed with amendments on 8 December 2010. The bill received third reading in the House of Commons on 2 March 2011 and was sent to the Senate, where it received first reading the next day. After receiving second reading in the Senate on 9 March 2011, the bill was referred to the Standing Senate Committee on Transport and Communications, where it was passed without further amendments.**

The bill amends the *Aeronautics Act* to create an exception from the application of another statute, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), **to permit operators of aircraft due to fly over the United States in the course of an international flight to provide information to a competent authority of that country.**

PIPEDA is the main federal legislation governing privacy rights and obligations in the private sector. To date, its application in the aviation context has mainly concerned the handling of personal information of passengers flying on Canadian aircraft.

Under PIPEDA, organizations are generally prevented from collecting, using or disclosing the personal information of customers to third parties without the customers' consent, except in certain specified situations involving law enforcement, national security, defence, international affairs, compliance with a warrant or subpoena, as well as other situations that would rarely apply in the air travel context, such as debt collection.

Currently, the *Aeronautics Act* exempts the operators of **Canadian aircraft or of aircraft departing from Canada** from PIPEDA's restrictions on disclosing personal information without consent when the laws of a foreign state require disclosure of information about anyone on board a flight that is landing in that state.¹

Therefore, under the existing legislation, passenger information for any aircraft that departs from Canada or for any Canadian aircraft that departs from any place outside Canada and will land in a foreign state can be disclosed to a foreign government without restriction by the air carrier, provided the disclosure meets the existing requirements in the *Aeronautics Act* and is required by the laws of the foreign state. Such disclosure would not require the consent of the passengers or the triggering of the normal exceptions in PIPEDA.

Bill C-42 amends **subsection 4.83(1) of the *Aeronautics Act* by expanding its application not only to the operator of an aircraft that is scheduled to land in a foreign state, but also to operators of aircraft flying over the United States.**

1.1 THE PASSENGER PROTECT PROGRAM

The *Aeronautics Act* is the authority for a federal government program called the Passenger Protect Program (PPP), informally known as the “no-fly list,” under which Transport Canada provides aircraft operators with a list of names of potential passengers that must be checked before issuing a boarding pass (the *specified persons list*). There has been much discussion about this program, which is intended to identify potential terrorists in airline passenger lists and block them from boarding domestic or international flights. It is similar to a parallel program run in the United States for the same purpose.²

The program was the focus of some controversy in its early days, since Transport Canada, assisted by the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS), adds names to the list without the knowledge or consent of the potential passengers. There has been considerable concern that names will end up on the list mistakenly, resulting in an innocent passenger being banned from air travel.³ For example, there were media reports that two young boys, a 15-year old junior champion athlete and a 10-year old both named Alastair Butt, were initially stopped from taking domestic Air Canada flights in 2007 because this name appeared on the list.⁴

The Privacy Commissioner of Canada joined with all of her provincial and territorial counterparts in 2007 to issue a resolution expressing concerns about the PPP and recommending that it be referred to a Parliamentary committee for study. The resolution also recommended, among other things, that more detailed and specific legislative authority for the program be developed under the *Aeronautics Act* and an independent oversight body be established for the program.⁵

Several Parliamentary committees have received briefings about the PPP since then, most notably the House of Commons standing committees on Public Safety and National Security and on Transport, Infrastructure and Communities.⁶

In 2009, the Privacy Commissioner of Canada conducted an audit of the PPP under the *Privacy Act*, the public sector privacy statute under which Transport Canada is regulated, and concluded that in most respects the program was compliant with the applicable statutes and policies, although there were some points that needed attention. The Privacy Commissioner of Canada intends to follow up with another audit of the program in 2011.⁷

Bill C-42 deals with what happens to the personal information of passengers once the air carriers have obtained it, either from Transport Canada’s specified persons list or another source. It therefore affects the application of PIPEDA, the statute which regulates the air carriers as private sector organizations, rather than the *Privacy Act*, the statute which regulates the federal public sector.

2 DESCRIPTION AND ANALYSIS

Bill C-42 contains two clauses. The first clause provides its abbreviated title, the Strengthening Aviation Security Act.

The second clause amends the *Aeronautics Act* so that its wording applies not only to operators of aircraft that are due to land in a foreign state, but also to those that will fly over the United States. The operators of aircraft will be exempted from the restrictions in PIPEDA on disclosing personal information without consent in the following cases, if such disclosure is required by the laws of the foreign state:

- an aircraft departing from Canada that will land in a foreign state or fly over the United States and land outside Canada; or
- a Canadian aircraft departing from outside Canada that will land in a foreign state or fly over the United States.

As proposed in the first reading version of the bill, this clause permitted such disclosure of personal information when any Canadian flight or any flight that departed from Canada was due to fly over or land in a foreign state, provided the disclosure met the existing requirements of the *Aeronautics Act* and was required by the laws of that state. In the case of Canadian flights, this provision would have applied whether or not the flight originated in Canada. Such disclosure would not have required either the consent of the passengers or the triggering of the normal exceptions in PIPEDA.

The House Standing Committee on Transport, Infrastructure and Communities amended clause 2 of the bill in order to specify that, in the case of flights over a foreign state, the United States was the only foreign state where the disclosure of passenger information without the passengers' consent would be permitted. This is allowed for any operator of an aircraft departing from Canada that is due to fly over the United States and land outside Canada or of a Canadian aircraft departing from any place outside Canada that is due to fly over the United States.

As amended by the House Standing Committee, clause 2 of the bill now comprises two subclauses. Subclause 2(1) provides that the operator of an aircraft will be permitted to provide any information that is in the operator's control relating to persons on board, or expected to be on board the aircraft, to a competent authority in the foreign state in which the flight is to land, and to the competent authority in the United States in the case where the aircraft is flying over but not landing there.

Subclause 2(1) also adds section 4.83(1.1) to the *Aeronautics Act* in order to require the operator of an aircraft that is due to fly over but not land in the United States to notify all persons that are on board or expected to be on board the aircraft that information relating to them may be provided to the Government of the United States. This clause, in effect, provides for the "informed consent" required under PIPEDA for information sharing to third parties.

Subclause 2(2) amends section 4.83 of the *Aeronautics Act* by adding a new subsection (4), which requires that “within two years after the day on which this subsection comes into force and every five years thereafter,” the House of Commons committee responsible for transport matters review the provisions and operations of the Act and that it report to the House of Commons on its findings within three months after the review is completed.

NOTES

1. *Aeronautics Act*, R.S. 1985, c. A-2, s. 4.83(1).
2. Office of the Privacy Commissioner of Canada, [Audit Report of the Privacy Commissioner of Canada: Passenger Protect Program Transport Canada \(Section 37 of the Privacy Act\)](#), 2009, p. 5.
3. *Ibid.*, p. 8.
4. Canwest News Service, “A pain in the Butts: 2 boys, same name, on no-fly list,” Canada.com, 29 June 2007.
5. Office of the Privacy Commissioner of Canada, [Resolution of Canada’s Privacy Commissioners and Privacy Enforcement Officials — Passenger Protect Program: Canada’s Aviation No-fly List](#), 28 June 2007.
6. See, for example: House of Commons, Standing Committee on Public Safety and National Security, [Evidence](#), 3rd Session, 40th Parliament, Meeting no. 14, 29 April 2010; House of Commons, Standing Committee on Public Safety and National Security, [Evidence](#), 1st Session, 39th Parliament, Meeting nos. 33 (1 March 2007), 49 (7 June 2007) and 51 (14 June 2007); House of Commons, Standing Committee on Transport, Infrastructure and Communities, [Evidence](#), 3rd Session, 40th Parliament, Meeting no. 16, 11 May 2010.
7. [Privacy Commissioner](#) (2009), p. 14.