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LEGISLATIVE SUMMARY



Bill C-17: ***An Act to amend the Air Canada Public Participation Act***

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Legislative Summary of Bill C-17

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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-17: AN ACT TO AMEND THE AIR CANADA PUBLIC PARTICIPATION ACT

1 BACKGROUND

Bill C-17: An Act to Amend the Air Canada Public Participation Act (short title: Air Canada and Its Associates Act) was introduced by the Minister of Transport, Infrastructure and Communities, the Honourable Denis Lebel, on 17 October 2011 and given first reading the same day. Among other things, the legislation:

- extends the application of Parts IV, IX and X of the *Official Languages Act* to designated air carriers under contract with Air Canada;
- deems the articles of ACE Aviation Holdings Inc. to include provisions respecting the location of its head office and the right of persons to communicate with that corporation in either official language; and
- exempts Air Canada from the application of section 25 of the *Official Languages Act* with respect to air services provided or made available by air carriers with which it has only code-sharing arrangements.¹

Bill C-17 is the latest in a series of amending bills (C-47, C-29 and C-36) with the same title that died on the *Order Paper* at the end of the sessions in which they were tabled (see section 1.7, “Previous Versions of the Bill,” in this legislative summary).

1.1 AIR CANADA’S OFFICIAL LANGUAGES OBLIGATIONS

The 1988 *Air Canada Public Participation Act*² (ACPPA) sets out conditions for the privatization of Air Canada. The ACPPA contained transitional measures leading to government divestiture and sought to ensure that Air Canada would continue to operate in both English and French by making the newly privatized corporation subject to the *Official Languages Act*³ (OLA).⁴ A further provision required Air Canada to maintain its head office in Montréal and operational and overhaul centres in Winnipeg, Montréal and Mississauga.⁵

Air Canada is subject to the OLA in its entirety. The ACPPA compels the airline not only to communicate with and provide services to the public in both official languages (Part IV of the OLA),⁶ but also to maintain a bilingual workplace (Part V of the OLA).⁷ In addition, Air Canada is subject to provisions that ensure equal opportunities for employment and advancement, as well as a requirement that its work force reflect the presence of both official-language communities (Part VI of the OLA).⁸ Air Canada is further required to implement the provisions pertaining to the development of official-language minority communities and the promotion of linguistic duality (Part VII of the OLA).⁹ Finally, the Commissioner of Official Languages is authorized to investigate complaints against the carrier (Part IX of the OLA) and may seek remedy where the carrier fails to comply with the provisions of the OLA (Part X of the OLA).¹⁰

1.2 CONSOLIDATION AND RESTRUCTURING IN RECENT YEARS

Air Canada has undergone many restructurings in the last decade. The airline acquired a number of regional carriers in the late 1990s, which led to the creation of Air Canada Jazz. In 2000, Parliament passed amendments to the ACPPA which ensured that Air Canada's subsidiaries, such as Jazz and Zip, would provide service to the public in both official languages. To date, the subsidiaries have only been subject to Part IV of the OLA, which requires customer service in both official languages, where numbers warrant. These obligations flow from the fact that the entities in question are bound to Air Canada by a service contract and therefore act as a third party on behalf of the Corporation.¹¹

In 2001, Air Canada merged with Canadian Airlines International, presenting the airline with new challenges in complying with its language obligations. In 2003, Air Canada was placed under *Companies' Creditors Arrangement Act*¹² protection, and in the months that followed, Air Canada underwent substantial restructuring that resulted in the formation of new corporate entities. In September 2004, Air Canada emerged from bankruptcy protection.

In 2004, Air Canada itself became a wholly owned subsidiary of a newly created parent company, ACE Aviation Holdings Inc. Several former divisions and subsidiaries of Air Canada were spun off into limited partnerships reporting directly or indirectly to ACE Aviation Holdings Inc.¹³ While the OLA continued to apply to Air Canada itself, ACE Aviation Holdings Inc. and the new corporate entities it owns were not subject to OLA provisions.

In 2006, Jazz was reorganized into a limited partnership. Since then, the company has been held independently through a separate income trust. Jazz operates flights on behalf of Air Canada under the "Air Canada Express" brand, as is the case with three other airlines that are under contract with Air Canada.¹⁴ Aeroplan¹⁵ has also been held independently since 2008. What this means is that those companies are no longer subsidiaries of Air Canada, nor are they corporations whose shares are held by Air Canada's majority shareholder. These changes created a legal void with respect to the obligations of the new entities under the OLA.

In August 2009, Air Canada renewed its service contract with Jazz for just over 10 years. Because of that contract, Jazz is still required to communicate with and provide services to the public in either official language under section 25 of the OLA, which means that it has to provide services in the preferred language of members of the public on flights that are designated bilingual. This is also the case for the other companies that operate flights under the "Air Canada Express" brand; however, they are not subject to the other provisions of the OLA.

Since December 2009, AC Cargo¹⁶ and ACGHS (Air Canada Ground Handling Services) have once again become operational divisions of Air Canada and are therefore subject to the OLA in its entirety.

The ACPPA and the OLA did not apply to AVEOS (Air Canada Technical Services), which announced in March 2012 that it would proceed with liquidation, because AVEOS was separate from the parent corporation.¹⁷ Now, Air Canada's maintenance

and repair activities are performed by Air Canada Maintenance, whose approximately 2,300 employees work at the airline's own facilities and are therefore subject to the OLA.¹⁸

ACE Aviation Holdings Inc.'s financial involvement in Air Canada has changed constantly in recent years. When it was created in 2004, the parent corporation held 100% of the shares in Air Canada, but by 30 June 2012, it held only 11.11%.¹⁹ Although it holds a minority interest, ACE Aviation Holdings Inc. has remained the Corporation's major shareholder, but it is in the process of winding up its operations.²⁰

1.3 RECOMMENDATIONS FROM PARLIAMENTARY COMMITTEES

There has been considerable controversy over the official language requirements imposed on Air Canada. Air Canada's obligations have been reviewed by parliamentary committees several times since 2001.

In June 2001, the Standing Joint Committee on Official Languages tabled an interim report on the bilingual services provided by Air Canada.²¹ The Standing Joint Committee formulated two recommendations to the government: first, that the airline make available to all travellers comment cards on services in the two official languages, and second, that the airline clearly indicate that bilingual services are available both in flight and on the ground.

In February 2002, the Standing Joint Committee tabled a report in which it made 16 recommendations to ensure Air Canada's compliance with the OLA.²² The recommendations covered subjects ranging from the offer, availability and quality of bilingual services to linguistic action plans, language training and staff recruitment.

The Standing Joint Committee also called upon the government to review section 10 of the ACPA "so that the wording clearly stipulates that Air Canada and its subsidiaries are subject to the *Official Languages Act* in its entirety, in the same way as a federal institution."²³ The Standing Joint Committee was of the opinion that "the linguistic regulations and provisions applying to Air Canada [were] adequate and provide[d] an effective implementation regime, including sanctions, penalties and other non-compliance measures."²⁴ It also asked that the ACPA "make it clear that the *Official Languages Act* takes precedence over collective agreements."²⁵ The Canadian Alliance members of the Standing Joint Committee issued a minority report which concluded that official language requirements hampered Air Canada's ability to compete with other airlines, and recommended that all references to the OLA be removed from the ACPA.

In 2004, the House of Commons (HoC) Standing Committee on Official Languages again heard witnesses on official language issues related to Air Canada. In testimony before the HoC Standing 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 International, it was obligated to comply with official language requirements while simultaneously providing job security for its mostly unilingual Canadian Airlines employees. Air

Canada officials found language training for unilingual employees to be costly²⁶ 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*.²⁷

- Officials from the airline stated that the company had spent considerable time and money to comply with the OLA and that the playing field should be leveled by making all national airlines in Canada subject to the OLA. For example, Air Canada cited the cost of compliance with the Part IV provisions of the OLA, which requires the airline to advertise in minority press markets, as an additional burden not imposed on its competitors.²⁸

Air Canada therefore requested that the Government of Canada act on the recommendations made by the Standing Joint Committee in its February 2002 report by:

- providing the company with the same financial resources as are available to other federal institutions to defray the cost of making the airline more bilingual; and
- enacting legislative changes which 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 that request, some members of the HoC Standing Committee pointed out that Air Canada knew it would be subject to the official language requirements before acquiring Canadian Airlines International and should have factored related costs into the acquisition.²⁹ In May 2005, the government tabled its first amending bill on public participation in Air Canada (Bill C-47).

In June 2006, the HoC Standing Committee issued a study on the application of the OLA to ACE Aviation Holdings Inc.³⁰ The report contained five recommendations underscoring the need to table a new bill. In the opinion of the HoC Standing Committee, the new bill would have to:

- take into account the evidence given by the Commissioner of Official Languages;
- stipulate that Air Canada continues to be subject to the OLA in its entirety;
- stipulate the obligations of divisions of Air Canada that became corporations by making those corporations subject to the OLA in its entirety; and
- stipulate that companies that were Air Canada subsidiaries prior to the restructuring are subject to Part IV of the OLA.

The HoC Standing Committee further asked that the new bill be referred to it directly. The government tabled Bill C-29 in October 2006 and Bill C-36 in December 2007.

In June 2008, the Standing Senate Committee on Official Languages tabled a report on bilingual staff at Air Canada.³¹ Issues dealt with in the report included the recruitment of bilingual staff, staff language training and financial resources. The Senate Committee's report included five recommendations. The government did not

have an opportunity to respond to the recommendations before the 39th Parliament ended.

Air Canada representatives appeared before the HoC Standing Committee again in 2009 and 2010. Despite the large number of complaints filed by travellers dissatisfied with the air carrier's offer of French services, Air Canada saw fit to highlight some of the initiatives that had been taken to improve the offer of services in both official languages. The large number of unilingual Anglophone employees and the lack of financial support from the federal government for language training, problems that resulted from the mergers that took place in the 2000s, were raised again.

The Minister of Transport, Infrastructure and Communities was also called to appear before the HoC Standing Committee. The Minister spoke about the Corporation's efforts to meet its obligations, particularly at the time of the 2010 Olympic and Paralympic Games in Vancouver and Whistler. He acknowledged the need for new legislation that would take into account the structural changes the air carrier had undergone.

The members of the HoC Standing Committee reiterated how important it was that Air Canada update its linguistic action plan and reminded the Corporation of its obligations under the OLA. Regarding the recruitment of bilingual employees, the HoC Standing Committee suggested that campaigns be carried out in Quebec, New Brunswick and Ontario.

In May 2010, the HoC Standing Committee tabled a report in the House of Commons inviting the Minister of Transport, Infrastructure and Communities "to introduce a bill regarding the application of the *Official Languages Act* to Air Canada, its subsidiaries and partners so that the Committee [might] study the bill this Spring."³² A year and a half later, the government tabled Bill C-17.

Air Canada's most recent appearance before a parliamentary committee to discuss its official languages obligations was on 28 November 2011, when it appeared before the Standing Senate Committee. At that time, Air Canada's representatives reiterated the company's commitment to respect its OLA obligations, while acknowledging that more work needs to be done to provide bilingual services more consistently across Canada.³³ Air Canada representatives objected to Bill C-17, calling its adoption unnecessary³⁴ (see section 3, "Commentary," in this legislative summary).

The Standing Senate Committee tabled a report in March 2012³⁵ that presented observations on Bill C-17. The Standing Senate Committee did not issue any formal recommendation in this regard; however, it encouraged the Minister of Transport, Infrastructure and Communities to consider a number of elements in the study of this bill. The government responded that:

- it did not plan to impose new language-of-work obligations on air carriers transporting passengers or goods under contract with Air Canada;
- it would not increase the number of routes currently designated bilingual under the *Official Languages (Communications with and Services to the Public) Regulations*; and

- it considered Bill C-17 to be a balanced approach between the official languages obligations of the carrier and its partners, the protection of the language rights of passengers and the conditions ensuring the viability of Air Canada.³⁶

1.4 RECOMMENDATIONS FROM THE COMMISSIONER OF OFFICIAL LANGUAGES

Air Canada is one of the three institutions that, year after year, are regularly the subject of complaints received by the Office of the Commissioner of Official Languages. This has been a problem since the first *Official Languages Act* was enacted in 1969. Services to the public have drawn the vast majority of complaints against the Corporation over the past five years, with one exception: in 2010–2011, more than nine out of 10 complaints related to language of work.

Table 1 –Linguistic Performance of Air Canada, as Indicated by Complaints Received by the Office of the Commissioner of Official Languages

Year	Number of Admissible Complaints	Services to the Public (Part IV) ^a	Language of Work (Part V)	Equitable Participation (Part VI)	Development and Promotion (Part VII)	Rank Among Institutions Garnering Complaints ^b
2000–2001	137	N/A ^c	N/A	N/A	N/A	2
2001–2002	143	N/A	N/A	N/A	N/A	1
2002–2003	127	N/A	N/A	N/A	N/A	2
2003–2004	58	N/A	N/A	N/A	N/A	3
2004–2005	84	N/A	N/A	N/A	N/A	1
2005–2006	69	N/A	N/A	N/A	N/A	1
2006–2007	61	57	2	0	2	1
2007–2008	86	76	6	0	4	1
2008–2009	75	67	7	0	1	N/A
2009–2010	71	61	10	0	0	N/A
2010–2011	483	34	449	0	0	N/A

Note: a. Parts refer to parts of the *Official Languages Act*.

b. The Office of the Commissioner stopped compiling these numbers in 2008–2009.

c. Not available.

Source: Table prepared by the authors based on data in the annual reports of the Commissioner of Official Languages and other dated provided by the Office of the Commissioner.

From 2007 to 2009, the Commissioner of Official Languages had harsh words for Air Canada and the new corporations regarding compliance with their language obligations and said he feared the legal void would persist. Most of the criticism concerned the number of complaints received, gaps in the staffing of bilingual positions and the recruitment of bilingual employees, failure by the Corporation to meet its language-of-work obligations, and the poor service provided by Air Canada in the two official languages at some Canadian airports. In the Commissioner's opinion, the government had to amend the ACPA.

The Commissioner of Official Languages recommended in two recent annual reports that the Minister of Transport table a bill to protect and uphold the language rights of the travelling public and Air Canada employees. In the 2008-2009 annual report, the Commissioner's recommendation read as follows:

The Commissioner recommends that the Minister of Transport table, as quickly as possible, a new bill to protect and uphold the language rights of the travelling public and Air Canada employees, regardless of the nature of the changes to the structure and organization of the air transport industry.³⁷

In the second volume of his 2009–2010 annual report, the Commissioner made the following recommendation:

[T]hat the Minister of Transport table a new bill as quickly as possible to protect and uphold the language rights of the travelling public and Air Canada employees, and make Jazz directly subject to the *Official Languages Act*.³⁸

When he appeared before the HoC Standing Committee on 31 March 2010, the Commissioner made the point that the future bill should:

- not only protect the language rights of the travelling public, but also ensure that Air Canada employees retain their right to work in the official language of their choice within the new entities in the Air Canada family;³⁹
- clearly define the obligations of all entities that are part of the Air Canada family;⁴⁰ and
- extend beyond ACE Aviation Holdings Inc. and target Air Canada entities.⁴¹

The Commissioner of Official Languages expressed the view that a new bill should consider the language rights of the travelling public, the language rights of Air Canada employees and the changing structure of the national carrier. The Commissioner continues to believe that Jazz should be directly subject to the OLA, both to Part IV (communications with and services to the public) and to Part V (language of work).

In September 2011, the Commissioner of Official Languages issued the report on its audit of the delivery of bilingual service to Air Canada passengers.⁴² Twelve recommendations were made to Air Canada. The audit focused on whether Air Canada:

- is committed, especially at the senior management level, to providing services of equal quality in both official languages;
- actively offers and provides bilingual services in the air, on the ground, on its website and at its call centres;
- consults representatives of official-language minority communities in the regions to identify their bilingual services needs; and
- monitors its performance in delivering services in the minority language both in the air and on the ground.

The audit made it clear that Air Canada “must show solid leadership and make a sincere commitment to linguistic duality at all hierarchical levels.”⁴³ The Commissioner said he was satisfied with the measures and timelines proposed by Air Canada for implementing his recommendations, with the exception of the measures taken by the Corporation to assist the official-language minority communities’ development. In his

2011–2012 annual report, the Commissioner reiterated the importance of consulting those communities.⁴⁴

On 24 and 25 October 2011, the Commissioner of Official Languages appeared before the two parliamentary committees on official languages. He commented briefly on Bill C-17, which he described as a step in the right direction. The Commissioner noted, however, that certain key elements, such as language of work, are missing. The bill in fact does not make the entities designated by the order subject to the obligations set out in Part V of the OLA. However, in 2010–2011, the Office of the Commissioner of Official Languages received more than 400 complaints against Air Canada relating to language-of-work issues.⁴⁵

1.5 COURT DECISIONS

In the summer of 2011, the Federal Court of Canada rendered a decision in the *Thibodeau v. Air Canada* case.⁴⁶ Mr. and Mrs. Thibodeau filed the action in March 2010 after making numerous complaints to Office of the Commissioner of Official Languages. The complaints concerned the lack of service in French on certain Air Canada and Jazz flights. The complaints asked the Federal Court for an order requiring Air Canada to comply with Part IV of the OLA. The Commissioner of Official Languages appeared in court as an intervener.

In its July 2011 judgment, the Court found that the Corporation had failed to comply with its language obligations under the OLA. The Court awarded \$12,000 in damages to Mr. and Mrs. Thibodeau and ordered that a monitoring system be put in place to identify, document and quantify potential violations of the Corporation's language duties. The monitoring system, the Court wrote, would also apply to Jazz, particularly when Jazz "does not assign flight attendants able to provide services in French on board flights on which there is significant demand for services in French."⁴⁷

Air Canada decided to appeal the decision in the hope of having certain trial court orders stayed. The Federal Court of Appeal rendered its decision on 25 September 2012.⁴⁸ The Court recognized that Air Canada had failed to respect its obligations to offer services in French, but decided that the carrier does not have an obligation to establish a monitoring system to identify and quantify OLA violations. The Court of Appeal reduced damages to \$3,000. It has not yet been decided whether the case will be brought before the Supreme Court. In 2005, the Federal Court also rendered a judgment involving Air Canada.⁴⁹ Mr. Thibodeau had been dissatisfied because of the lack of service in French on an Air Canada flight and filed a complaint with the Commissioner. In its decision, the Court confirmed that Air Canada's language obligations prevail over the Corporation's collective agreements. In other words, the Court wrote, Air Canada is required to take measures to ensure that its unions comply with the OLA. The Federal Court of Appeal upheld the decision in 2007,⁵⁰ requiring that Air Canada award \$7,000 to Mr. Thibodeau. That decision confirmed the language rights of the travelling public using the Corporation's services, and the Corporation's obligation to offer services in both official languages.

1.6 AIR CANADA'S LINGUISTIC ACTION PLAN 2011–2014

Air Canada developed a Linguistic Action Plan for 2001–2010 in response to the challenges brought by its merger with Canadian Airlines International in the early 2000s. The Action Plan has been updated for 2011–2014 and includes commitments related to leadership in management, recruitment, staff communications and training, service standards, audits and performance, and communities.⁵¹ Its objectives are to:

- confirm senior management's commitment to providing the public with high-quality service in both official languages as required by the *Official Languages Act* and Air Canada's language policy;
- clarify the Company's language commitments to its employees; and
- guide managers and employees in implementing the language policy.⁵²

1.7 PREVIOUS VERSIONS OF THE BILL

As stated earlier, Bill C-17 is the latest in a series of amending bills on public participation in Air Canada.

On 2 May 2005, then Minister of Transport, the Honourable Jean Lapierre, tabled Bill C-47,⁵³ whose aim was to expand the language obligations of Air Canada and its partners and to include provisions respecting the location of ACE Aviation Holdings Inc.'s head office and the rights of persons who communicate with that corporation. The bill would have amended the ACPA to ensure that Air Canada's successor corporations be subject to certain official languages requirements. For Jazz and the new companies, only parts IV, VIII, IX and X of the OLA would have applied. The bill maintained the status quo regarding Air Canada's language obligations as they were prior to restructuring in the early 2000s. The legislation pertaining to Air Canada would have been replaced by the *Air Canada and Its Affiliates Act*. The bill died on the *Order Paper* at the committee stage in November 2005.

A similar bill, numbered C-29,⁵⁴ was tabled on 18 October 2006 by the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities. This redrafted bill took into account certain recommendations made by the HoC Standing Committee in its second report, tabled in June 2006, but Bill C-29 died on the *Order Paper* at second reading in September 2007. Had it passed, the bill would have exempted certain affiliates from official languages obligations, maintained ACE Aviation Holdings Inc.'s head office in Montréal and guaranteed certain rights for the public regarding bilingual services. The Commissioner of Official Languages, Graham Fraser, felt that the bill had technical flaws, given the lack of language obligations for Jazz employees.

Then came Bill C-36,⁵⁵ tabled on 10 December 2007 by the Minister of Transport, Infrastructure and Communities. Although this bill was broadly similar to the version tabled during the previous session, it did not take into account the concerns raised by the Commissioner of Official Languages regarding Jazz's obligations with respect to language of work. The bill did not pass first reading and died on the *Order Paper* in September 2008.

2 DESCRIPTION AND ANALYSIS

Clauses 2 to 4 of Bill C-17 amend the ACPPA in order to extend its application to designated air carriers, include provisions in the articles of ACE Aviation Holdings Inc. and exempt air carriers with which Air Canada has only code-sharing arrangements.

2.1 ADDITION OF SECTIONS 10.01, 10.02 AND 10.03 TO THE ACPPA (CLAUSE 2 OF THE BILL)

Clause 2 of the bill proposes the addition of three sections following section 10 of the ACPPA.

2.1.1 SECTION 10.1: EXCEPTION FOR CARRIERS WITH WHICH AIR CANADA HAS ONLY CODE-SHARING ARRANGEMENTS

Currently, section 10 of the ACPPA states that section 25 of the OLA, which deals with services provided by third parties, applies under certain conditions. New section 10.1 adds an exception to section 10(1) of the ACPPA; it exempts Air Canada from applying section 25 of the OLA to air services provided by carriers with which the Corporation has only code-sharing arrangements. The new section applies to air services that:

- are provided by another entity under both the entity's and the Corporation's air carrier code; and
- are not designated by order.

Code sharing is a business practice used by regular airlines whereby a given flight is shared with partner carriers. In other words, one airline can operate a given flight, but one or more other companies market it and are allowed to sell seats in their own name. This enables airlines to offer more destinations and more connections, but there is no guarantee that the services will be the same from company to company. Air Canada has code-sharing arrangements with many airlines around the world.⁵⁶

2.1.2 SECTION 10.2: ENTITIES DESIGNATED BY ORDER

New section 10.2 allows the Governor in Council, on the recommendation of the Minister of Transport, to designate by order one or more entities to which parts IV, IX and X of the OLA apply. Part IV pertains to communications with and services to the public. Part IX deals with the mandate of the Commissioner of Official Languages and the Commissioner's power to investigate complaints. Part X allows a complainant who feels aggrieved to seek remedy from the Federal Court.

2.1.3 SECTION 10.3: DEFINITIONS

New section 10.3 defines the terms "customer," "shipper," "air service," "incidental services" and "route" in the context of the new sections 10.1, 10.2 and 10.3. The

definitions are almost identical to those in section 10(10) of the ACPA, and they apply to entities designated by order.

The definition of the term “customer” is fairly broad and includes any person who uses or intends to use an air service as a passenger, shipper or consignee.

The definition of the term “shipper” is taken verbatim from section 6 of the *Canada Transportation Act*, that is, “a person who sends or receives goods by means of a carrier or intends to do so”.⁵⁷

The definition of the term “air service” comes from section 55(1) of the *Canada Air Transportation Act*, that is, “a service, provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both”.⁵⁸ The bill adds an element to the definition of air service by also including incidental services.

“Incidental services” fall into four categories: ticketing and reservation services; information on routes or tariffs (e.g., notices and announcements); services provided or made available to customers at an airport (e.g., passenger control, announcement, counter services); and services related to baggage or freight claims and client relations.

Finally, “route” is “a route on which an entity provides a two-way air service between the starting and finishing points of that service by a single conveyance, with or without intermediate stops.” This definition is similar to the definition in section 2 of the *Official Languages (Communications with and Services to the Public) Regulations*.

2.2 ADDITION OF SECTIONS 10.2 AND 10.3 TO THE ACPA (CLAUSE 3 OF THE BILL)

The ACPA requires Air Canada’s head office to be located in Montréal. Clause 3 of the bill extends this requirement to ACE Aviation Holdings Inc., which is shareholder in Air Canada.

2.2.1 SECTION 10.2: PROVISIONS IN THE ARTICLES OF ACE AVIATION HOLDINGS INC.

Under section 10.2, the articles of incorporation of ACE Aviation Holdings Inc. are deemed to contain provisions requiring ACE Aviation Holdings Inc. to ensure that members of the public can, in either official language, communicate with and obtain services from the head office and any other office where there is a significant demand for bilingual services. The articles are also deemed to include a provision requiring the company to keep its head office in Montréal.

2.2.2 SECTION 10.3: RESTRICTION ON AMENDMENT OF THE ARTICLES OF INCORPORATION OF ACE AVIATION HOLDINGS INC.

Section 10.3 prevents ACE Aviation Holdings Inc. from applying for continuance in another jurisdiction, meaning that the company has to be incorporated under the *Canada Business Corporations Act*. ACE Aviation Holdings Inc. may not change its

articles or bylaws in a way that is inconsistent with the head office and language requirements outlined above.

2.3 COMING INTO FORCE (CLAUSE 4 OF THE BILL)

Clause 4 of the bill states that the proposed Act will come into force on a day or days to be fixed by order of the Governor in Council.

3 COMMENTARY

This section summarizes some of the main differences between Bill C-17 and its predecessor bills, alluded to in earlier sections of this legislative summary.

Unlike the previous similar bills, Bill C-17 does not specifically identify the entities to which the OLA is to apply. Its immediate predecessor, Bill C-36, contained provisions making Jazz and “new undertakings” subject to the OLA by regulation. Bill C-17, on the other hand, states that air carriers will be made subject to the OLA by order of the Governor in Council. This approach affords a great deal of flexibility for future designations, but it also gives the Governor in Council and the Minister of Transport broad discretionary powers.

Because the bill refers to carriers “under contract with Air Canada,” there is some question as to whether entities other than those operating under the “Air Canada Express” brand might be included. At this time, four third-party companies operate flights on behalf of Air Canada and are under contract with the company; these are Jazz (Jazz Air), Air Georgian (Air Alliance), Exploits Valley Air Services (EVAS) and Sky Regional Airlines.

When they appeared before the Senate Committee, Air Canada representatives said that the provisions in section 25 of the OLA, which apply to services provided by third parties, were adequate.⁵⁹ In their opinion, there is no need to extend the application of parts IV, IX and X of the OLA to designated carriers under contract with Air Canada, as proposed in Bill C-17.

Yet the Commissioner of Official Languages said in his 2009–2010 annual report that his inability to directly investigate Jazz was a problem. According to current provisions, “the Commissioner can make recommendations regarding Air Canada if the Act’s provisions are contravened, but Air Canada remains responsible for ensuring that Jazz takes corrective measures.”⁶⁰ It is precisely for this reason that the Commissioner of Official Languages recommended that Jazz be made directly subject to the OLA. Transport Canada stated in a news release that the amendments provided for in Bill C-17 “will allow the Commissioner of Official Languages to investigate complaints about, and audit the performance of, these contracted carrier partners directly.”⁶¹

Interestingly, the provisions concerning ACE Aviation Holdings Inc. have not changed since the first bill (C-47) was tabled in 2005. The need to make ACE Aviation Holdings Inc. subject to the obligations regarding communications with the

public and the provisions dealing with the location of its head office appear to remain in the Minister of Transport, Infrastructure and Communities' opinion.

The ACPPA requires Air Canada to keep its head office in Montréal and its operational and overhaul centres in Montréal, Winnipeg and Mississauga. Corporations that report directly or indirectly to ACE Aviation Holdings Inc., such as Jazz and Aeroplan, are not subject to those provisions. ACE Aviation Holdings Inc. now holds no more than 11.11% of Air Canada's shares, according to 30 June 2012 data.⁶² Further, the affairs of ACE Aviation Holdings Inc. are being wound up. In this context, the question arises whether the provisions in the bill regarding its application to ACE Aviation Holdings Inc. could soon become obsolete. Air Canada representatives told the parliamentary committee that the provisions of Bill C-17 pertaining to ACE Aviation Holdings Inc. were unnecessary given that the company currently holds only a minority interest in Air Canada.⁶³

The previous version of the bill (C-36) contained provisions making Jazz and "new undertakings" subject to Part VIII of the OLA, but Bill C-17 does not. This means that entities designated by order would not be subject to the federal principles and programs established by Treasury Board and used to apply parts IV, V and VI of the OLA. Treasury Board would therefore not be able to monitor the designated entities and verify their compliance with official languages principles, directives and instructions as it does for Air Canada.

Finally, Bill C-17 has still not addressed the issue of the language of work of employees of Air Canada entities (Part V of the LLO), despite much criticism in recent years from the Commissioner of Official Languages and from parliamentary committees. In their testimony before the Senate Committee, Air Canada representatives said it would be inappropriate to impose obligations regarding language of work on entities under contract with Air Canada. They believe that doing so would involve significant costs and resources, and that the company could even run the risk of losing its contracts with those entities.⁶⁴ The same position was adopted in the Government response to the Senate Committee report, in which the government stated that it would not impose new language-of-work obligations on air carriers under contract with Air Canada.⁶⁵

NOTES

1. [Bill C-17: An Act to Amend the Air Canada Public Participation Act](#) (first reading version, 17 October 2011), summary.
2. [Air Canada Public Participation Act](#), R.S.C., 1985, c. 35 (4th Supp.).
3. [Official Languages Act](#), R.S.C., 1985, c. 31 (4th Supp.).
4. ACPPA, s. 10.
5. ACPPA, s. 6(1)(d).

6. The scope of Air Canada's obligations is specified in the [Official Languages \(Communications with and Services to the Public\) Regulations](#), SOR/92-48. There are eight specific contexts in which there is an obligation to provide services in both official languages in flight or on the ground: 1. at Air Canada headquarters in Montréal (this obligation flows from s. 22 of the OLA and s. 10 of the ACPPA); 2. on a route that starts, has an intermediate stop or finishes at an airport in the National Capital Region, the Montréal Census Metropolitan Area or the City of Moncton; 3. on a route that starts and finishes at airports between provinces that have a linguistic minority equal to at least 5% of the total population (i.e., Quebec, New Brunswick and Ontario); 4. on a route that links two bilingual regions; 5. in communications pertaining to passenger safety or health (this obligation applies to all air carriers, including Air Canada); 6. at an airport that serves at least 1,000,000 passengers a year (according to data from the Office of the Commissioner of Official Languages, this means the airports in St. John's, N.L.; Halifax, N.S.; city of Québec and Montréal, Que.; Ottawa and Toronto, Ont.; Winnipeg, Man.; Saskatoon, Sask.; Edmonton and Calgary, Alta.; Kelowna, Vancouver and Victoria, B.C.); 7. where the demand for services in the official-language minority community is at least 5% (according to data from the Office of the Commissioner of Official Languages, this means the airports in Dieppe, Moncton, Fredericton, N.B.; Magdalen Islands, Sept-Îles, the city of Québec, Val d'Or and Rouyn-Noranda, Que.; North Bay, Sudbury, Timmins, Windsor and Sault Ste. Marie, Ont.; and Victoria, B.C.); 8. at local offices that provide ticketing and reservation services, information on routes and tariffs, customer services at the airport, baggage and freight claims and client relations; these offices are required to meet the "significant demand" criterion (according to [Burotis](#), only one in 20 local Air Canada offices – the office in St. John's – does not have to offer services in both official languages; 14 of the Air Canada's 19 offshore offices are required to offer bilingual services).
7. Under Part V of the OLA, Air Canada must provide its employees with personal and central services and regularly used work instruments in both official languages in regions designated bilingual for language-of-work purposes. This includes the National Capital Region; some parts of northern and eastern Ontario; the region of Montréal; parts of the Eastern Townships, the Gaspé region and western Quebec; and New Brunswick. These language-of-work obligations apply only to the Corporation, not to Air Canada entities.
8. Part VI of the OLA requires the Corporation to ensure that English- and French-speaking Canadians have equal opportunities for employment and advancement. Again, these obligations do not extend to Air Canada entities.
9. Part VII of the OLA requires the Corporation to take positive measures to support and assist the development of English and French communities and promote linguistic duality. Air Canada is not, however, deemed to be among the institutions with a high potential for contributing to the implementation of Part VII and therefore only has to submit a short-form report on the implementation of section 41 of the OLA to the Department of Canadian Heritage every three years. Air Canada entities are not required to meet these obligations.
10. Parts IX and X of the OLA do not apply to Air Canada entities.
11. The provisions of section 25 of the OLA apply in this case. Section 25 requires federal institutions to ensure that in Canada and elsewhere, members of the public can communicate with and obtain services from third parties acting on behalf of the institution in either official language. At present, four third-party entities operate flights on behalf of Air Canada. They are under contract with the company and are therefore required to offer services in the two official languages where there is significant demand. These entities, which operate under the "Air Canada Express" brand, are Jazz (Jazz Air), Air Georgian (Air Alliance), Exploits Valley Air Services (EVAS) and Sky Regional Airlines.
12. [Companies' Creditors Arrangement Act](#), R.S.C., 1985, c. C-36.

13. On 30 September 2004, ACE Aviation Holdings Inc. became the parent holding company of the reorganized Air Canada and each of its subsidiaries. In addition to Air Canada itself, ACE Aviation Holdings Inc. took control of Aeroplan, Jazz, Destina and Touram (Air Canada Vacations), which were already separate legal entities. AVEOS (Air Canada Technical Services, formerly known as ACTS), AC Cargo (Air Canada Cargo), ACGHS (Air Canada Ground Handling Services) and Air Canada Online were then established as stand-alone limited partnerships under ACE.
14. Jazz serves all of Canada. Air Georgian serves central and eastern Canada, from Toronto to Sydney, Nova Scotia, and parts of Alberta. EVAS operates flights in the Maritimes and in Newfoundland and Labrador. Sky Regional flies between Montreal and the Toronto Island Airport.
15. Aeroplan is not a federally regulated company and therefore does not fall under the legislative authority of Parliament, which means that it is not subject to the OLA. The same is true of Touram.
16. AC Cargo “provides direct cargo services to over 150 Canadian and international destinations and has sales representation in over 50 countries.” Source: Air Canada Cargo, [About Air Canada Cargo](#).
17. A decision made in February 2011 confirmed this status for AVEOS. For more details, see Canadian Industrial Relations Board, [Order No. 9995-U](#).
18. Air Canada, [Industry Facts](#).
19. ACE Aviation, [ACE Aviation Holdings Overview](#).
20. “ACE Aviation reports second quarter results,” *CNW Telbec*, Montréal, 13 August 2012.
21. Parliament of Canada, Standing Joint Committee on Official Languages, [Study on the Bilingual Services Offered by Air Canada](#), 1st Session, 37th Parliament, June 2001.
22. Parliament of Canada, Standing Joint Committee on Official Languages, [Air Canada: Good Intentions Are Not Enough!](#), 1st Session, 37th Parliament, February 2002.
23. Ibid.
24. Ibid.
25. Ibid.
26. House of Commons, Standing Committee on Official Languages, [Evidence](#), 1st Session, 38th Parliament, 25 November 2004, 0910 (Duncan Dee, Senior Vice-President, Corporate Affairs, Air Canada).
27. Ibid., 0915.
28. Section 30 of the OLA requires bilingual communications with the public and the use of the media of communication that will ensure effective communications that will reach members of the public in the official language of their choice. Ibid., 0920.
29. Ibid., 0950.
30. 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](#), 1st Session, 39th Parliament, June 2006.
31. Senate, Standing Committee on Official Languages, [Bilingual Staff at Air Canada: Embracing the Challenge and Moving Forward](#), 2nd Session, 39th Parliament, June 2008.
32. House of Commons, Standing Committee on Official Languages, [Invitation to introduce a bill regarding the application of the Official Languages Act to Air Canada, its partners](#), 3rd Session, 40th Parliament, April 2010.

33. Senate, Standing Committee on Official Languages, [Evidence](#), 1st Session, 41st Parliament, 28 November 2011 (Priscille Leblanc, Vice-President, Corporate Communications, Air Canada).
34. Senate, Standing Committee on Official Languages, [Evidence](#), 1st Session, 41st Parliament, 28 November 2011 (Louise-Helen Senecal, Assistant General Counsel, Air Canada).
35. Senate, Standing Committee on Official Languages, [Air Canada's Obligations under the Official Languages Act: Towards Substantive Equality](#), 1st Session, 41st Parliament, March 2012.
36. Honourable Tony Clement, [Government response to the report of the Standing Senate Committee on Official Languages: Air Canada's Obligations under the Official Languages Act: Towards Substantive Equality \(March 2012\)](#), received 2 October 2012.
37. Office of the Commissioner of Official Languages, [Two Official Languages, One Common Space: Annual Report 2008–2009](#), Ottawa, 2009, p. 40.
38. Office of the Commissioner of Official Languages, [Beyond Obligations – Annual Report 2009–2010: Volume II](#), Ottawa, 2010, p. 16.
39. House of Commons, Standing Committee on Official Languages, [Evidence](#), 3rd Session, 40th Parliament, 30 March 2010, 0910 (Graham Fraser, Commissioner, Office of the Commissioner of Official Languages).
40. Ibid., 0920.
41. Ibid., 1005.
42. Office of the Commissioner of Official Languages, [Audit of Service Delivery in English and French to Air Canada Passengers](#), Ottawa, September 2011.
43. Ibid.
44. Office of the Commissioner of Official Languages, [Annual Report 2011–2012](#), Ottawa, 2012, p. 39.
45. Office of the Commissioner of Official Languages, [Leadership, Action, Results: Annual Report 2010–2011](#), Ottawa, 2011, p. 42. Comments made by Air Canada representatives to the parliamentary committee seem to indicate that these complaints relate to the unique circumstances of AVEOS, which became an independent corporation during the past year. Because AVEOS employees were no longer considered Air Canada employees, they lost their language-of-work rights. This situation resulted in an avalanche of complaints to the Office of the Commissioner of Official Languages. (Senate, Standing Committee on Official Languages [28 November 2011] [Louise-Helen Senecal, Assistant General Counsel, Air Canada]).
46. [Thibodeau v. Air Canada](#), [2011] FC 876.
47. Ibid.
48. [Thibodeau v. Air Canada](#), [2012] FCA 246.
49. [Thibodeau v. Air Canada](#), [2005] FC 1156.
50. [Air Canada v. Thibodeau](#), [2007] FCA 115.
51. Air Canada, [Air Canada Linguistic Action Plan – Communications with and Services to the Public 2011–2014](#), 2011.
52. Ibid., p. 4.
53. [Bill C-47: An Act to amend the Air Canada Public Participation Act](#), 1st Session, 38th Parliament.

54. [Bill C-29: An Act to amend the Air Canada Public Participation Act](#), 1st Session, 39th Parliament.
55. [Bill C-36: An Act to amend the Air Canada Public Participation Act](#), 2nd Session, 39th Parliament.
56. According to the [Important notice: Codeshare flights/other airlines](#) page on Air Canada's website, the Corporation has approximately 30 multiple code-sharing partners worldwide.
57. [Canada Transportation Act](#), S.C. 1996, c. 10, s. 6.
58. Ibid., s. 55(1).
59. Senate, Standing Committee on Official Languages (28 November 2011) (Louise-Helen Senecal, Assistant General Counsel, Air Canada).
60. Office of the Commissioner of Official Languages (2010), p. 16.
61. Transport Canada, "[Government of Canada introduces amendments to the Air Canada Public Participation Act](#)," News release, 17 October 2011.
62. ACE Aviation, [ACE Aviation Holdings Overview](#).
63. Senate, Standing Committee on Official Languages (28 November 2011) (Louise-Helen Senecal, Assistant General Counsel, Air Canada).
64. Ibid. (Priscille Leblanc, Vice-President, Corporate Communications, Air Canada).
65. Honourable Tony Clement (2 October 2012).