



## Legislative Summary

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

Publication No. 40-3-C42-E  
28 June 2010

**Alysia Davies**

Legal and Legislative Affairs Division  
Parliamentary Information and Research Service

## **Legislative Summary of Bill C-42**

HTML and PDF versions of this publication are available on Intraparl (the parliamentary intranet) and on the Parliament of Canada website.

In the electronic versions, a number of the endnote entries contain hyperlinks to referenced resources.

*Ce document est également publié en français.*

Library of Parliament **Legislative Summaries** summarize government bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

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**.

# CONTENTS

|     |                                     |   |
|-----|-------------------------------------|---|
| 1   | BACKGROUND.....                     | 1 |
| 1.1 | The Passenger Protect Program ..... | 2 |
| 2   | DESCRIPTION AND ANALYSIS.....       | 3 |

# 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 amends the *Aeronautics Act* to create an exception from the application of another statute, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), for operators of aircraft.

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 aircraft 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.<sup>1</sup>

Accordingly, passenger information for any Canadian flight that will land in a foreign state (whether or not the flight originates in Canada) 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 this section to expand its application – it would now apply not only with respect to foreign states in which the flight is landing, but also to any foreign states that the flight would travel over. Accordingly, whether or not the foreign state that a flight lands in requires the disclosure of any personal information, under this bill, an air carrier would be able to provide disclosure without consent (or other restrictions to which it would normally be subject under PIPEDA) if the laws of a foreign state on the flight path require it.

## 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

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* to exempt the operators of aircraft from the restrictions in PIPEDA on disclosing personal information without consent when the laws of a foreign state require disclosure of information about anyone on board a flight over that state.

Specifically, passenger information for any Canadian flight that will fly over a foreign state (whether or not the flight originates in Canada) could be disclosed by the air carrier to that state's government without restriction, 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 either the consent of the passengers or the triggering of the normal exceptions in PIPEDA.

---

### NOTES

1. *Aeronautics Act*, R.S. 1985, c. A-2, s. 4.83(1).
2. Office of the Privacy Commissioner of Canada [Privacy Commissioner], [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](#), 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, Meeting no. 14, 29 April 2010; House of Commons Standing Committee on Public Safety and National Security, [Evidence](#), 1<sup>st</sup> Session, 39<sup>th</sup> 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](#), 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, Meeting no. 16, 11 May 2010.
7. [Privacy Commissioner](#) (2009), p. 14.