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LEGISLATIVE SUMMARY



Bill C-10: An Act to amend the Air Canada Public Participation Act and to provide for certain other measures

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Jed Chong

Legal and Social Affairs Division
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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)

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LEGISLATIVE SUMMARY OF BILL C-10: AN ACT TO AMEND THE AIR CANADA PUBLIC PARTICIPATION ACT AND TO PROVIDE FOR CERTAIN OTHER MEASURES

1 BACKGROUND

Bill C-10, An Act to amend the Air Canada Public Participation Act and to provide for certain other measures,¹ was introduced by the Minister of Transport and received first reading in the House of Commons on 24 March 2016.

The bill amends the *Air Canada Public Participation Act* (ACPPA)² to modify existing requirements governing where Air Canada must carry out its aircraft maintenance activities, as well as the type and volume of those activities. The bill also provides for certain other measures related to this obligation.

According to Transport Canada, the goal of the proposed amendments is to “clarify the nearly 30-year-old Act to allow Air Canada the flexibility to be competitive in a constantly evolving air transport sector.”³

1.1 AIR CANADA PUBLIC PARTICIPATION ACT

Introduced in 1988, the ACPPA sets out conditions for the privatization of Air Canada.

1.1.1 SUMMARY OF CURRENT PROVISIONS

Among other things, the Act stipulates that Air Canada must continue as a share corporation under the regime of the *Canada Business Corporations Act* (CBCA).⁴ Sections 6(1)(b) and 6(1)(c) of the ACPPA require Air Canada to include provisions in its articles of continuance regarding the issue, transfer and ownership of shares. Air Canada must remain Canadian-owned and -controlled, and ownership of Air Canada’s voting interests by non-Canadian residents is limited to 25%.⁵

Under section 6(1)(d), Air Canada must also include provisions in its articles of continuance requiring it “to maintain operational and overhaul centres in the City of Winnipeg, the Montreal Urban Community and the City of Mississauga.”

In addition, under section 6(1)(e) of the ACPPA, Air Canada must include provisions in its articles of continuance requiring the airline to locate its head office in the Montreal Urban Community.

Finally, section 10 of the ACPPA makes the airline subject to the *Official Languages Act*, meaning that it must operate in both English and French. Under its official language obligations, the airline must not only communicate with and provide services to the public in both official languages, but it must also maintain a bilingual workplace and ensure equal opportunities for employment and advancement for both official language communities.⁶

1.1.2 AMENDMENTS NOT IN FORCE

The *Budget Implementation Act, 2009*⁷ introduced amendments to the ACPPA which have not come into force. These amendments repeal the provisions of the ACPPA requiring that Air Canada's articles of continuance contain provisions imposing limits on non-resident share ownership. The changes also repeal the provisions of the articles of continuance providing for those limits.⁸

The *Budget Implementation Act, 2009* also introduced amendments to the *Canada Transportation Act* (CTA)⁹ that have yet to come into force. These amendments allow the Governor in Council to increase the foreign ownership limit of Air Canada from the existing 25% to a maximum of 49%.¹⁰

Certain parts of Canada's 2009 air transport agreement with the European Union,¹¹ notably those relating to "fifth freedom" rights,¹² will not be applied until the changes to both the ACPPA and the CTA come into force.

The *Budget Implementation Act, 2009* amendments to the ACPPA and the CTA will come into force on a date to be established by the Governor in Council.

1.2 RECENT LITIGATION

In March 2012, Aveos Fleet Performance Inc., a former Air Canada subsidiary that provided aircraft maintenance services to Air Canada, declared bankruptcy.¹³ Following the bankruptcy, the Attorney General of Quebec took legal action against Air Canada for not carrying out the maintenance of its aircraft in Montréal in breach of section 6(1)(d) of the ACPPA. Both the Superior Court of Quebec in 2013¹⁴ and the Quebec Court of Appeal in 2015¹⁵ ruled in favour of the Attorney General of Quebec, and Air Canada sought leave to appeal to the Supreme Court of Canada.

On 17 February 2016, several developments involving Air Canada were made public:

- a letter of intent for Air Canada to purchase C Series aircraft from Bombardier Commercial Aircraft;¹⁶
- an agreement between Air Canada and the government of Quebec that the heavy maintenance of the C Series aircraft would take place in Quebec for at least 20 years after delivery, contributing to the creation in that province of a centre of excellence, which is expected to create 1,000 jobs over 15 years;¹⁷ and
- a promise by the Quebec government to end its litigation against Air Canada upon finalization of its agreement with the airline.

The two parties have requested that the Supreme Court delay its decision on Air Canada's application to appeal¹⁸ until 15 July 2016 to allow them to continue to work toward an agreement that would end the litigation.¹⁹

The Attorney General of Manitoba was an intervener in the Quebec case. On 14 March 2016, Air Canada announced an agreement with the government of Manitoba to help establish in the province a Western Canada Centre of Excellence for certain aircraft maintenance activities. As part of the agreement, "Air Canada will bring to Manitoba three of its aviation suppliers and partners with unique expertise and

capabilities.”²⁰ Starting in 2017, the Centre is expected to create 150 jobs, with the possibility of expansion in the future. The Manitoba government agreed to end its participation in the Quebec litigation related to Air Canada’s obligations under the ACPPA, subject to completion of the final agreement.²¹

2 DESCRIPTION AND ANALYSIS

2.1 AIR CANADA PUBLIC PARTICIPATION ACT (CLAUSE 1)

Clause 1 of Bill C-10 sets out a new section 6(1)(d) of the ACPPA under which Air Canada is required to carry out or cause to be carried out maintenance of its aircraft in the provinces of Manitoba, Quebec and Ontario rather than in the City of Winnipeg, the Montreal Urban Community and the City of Mississauga. The new version of section 6(1)(d) specifies that the maintenance may be to airframes, engines, components, equipment or parts.

Clause 1 also adds section 6(4) to the ACPPA, which specifies that Air Canada may, without eliminating maintenance activities in the three provinces outlined in new section 6(1)(d), change the type or volume of any or all of those activities. This new section also specifies that the airline may, without eliminating these activities in the three provinces, change the level of employment in any or all of those activities.

These changes aim to clarify three questions about the ACPPA that have been the subject of debate in Parliament and judicial interpretation:

- Can Air Canada hire third parties to conduct the maintenance activities?
- What kinds of maintenance work must be carried out?
- How much is enough to satisfy the legislative requirement?

Finally, clause 1 amends section 6(7) of the ACPPA, to specify that the term “aircraft” has the same meaning as in section 3(1) of the *Aeronautics Act*.²²

2.2 AMENDMENT OF ARTICLES (CLAUSE 2)

Clause 2 of Bill C-10 allows Air Canada’s board of directors to implement the above changes to its articles of continuation without having to seek the approval of its shareholders as provided for in the CBCA. However, this clause specifies that Air Canada must send a copy of the amended articles of continuation to the director appointed by the government under the CBCA.

Clause 2 also outlines the definitions that apply in this clause.

2.3 COORDINATING AMENDMENTS (CLAUSE 3)

The coordinating amendments contained in clause 3 of Bill C-10 allow for the changing of section numbers for the amendments in clauses 1(2) to 1(4) of the bill, whether the amendments from the *Budget Implementation Act, 2009* come into force before, on the same day as or after Bill C-10.

3 COMMENTARY

In a news release following the tabling of Bill C-10, Air Canada expressed support for the legislation, stating that it “welcomed the greater flexibility contained in the bill.”²³ According to the airline’s president and Chief Executive Officer, Bill C-10 acknowledges that “Air Canada is a private sector company, owned by private sector interests, which operates in a highly competitive global industry that has undergone dramatic transformation over the past three decades.”

The Conseil du patronat du Québec has also expressed support for Bill C-10, noting that the bill would give Air Canada the flexibility it needs to optimize its performance and development in the face of increasing competition.²⁴

In contrast, the Fédération des travailleurs et travailleuses du Québec (FTQ), a union with 600,000 members in the province,²⁵ has opposed Bill C-10. According to the FTQ’s president, the government “showed which side it is on by aligning itself with Air Canada.”²⁶ The FTQ has also said that the government is “turning its back on Montréal-based jobs.”²⁷ On 11 March 2016, the FTQ filed a motion with the Quebec Superior Court seeking an injunction to force Air Canada to respect its maintenance obligations under the current ACPPA.²⁸

According to media reports, a class-action lawsuit seeking up to \$1 billion has been filed on behalf of former Aveos employees against Air Canada and the governments of Quebec and Canada.²⁹ The lawsuit blames harm caused to the former employees on the Quebec government’s withdrawal of its lawsuit against Air Canada, and criticizes the federal government for endorsing Air Canada’s position by proposing to alter the law.³⁰

The media have also reported that the Quebec government would like the federal government to delay the coming into force of the legislation. According to the coverage, the province is concerned that implementing Bill C-10’s provisions too quickly will affect its ongoing negotiations with Air Canada.³¹

NOTES

1. [Bill C-10: An Act to amend the Air Canada Public Participation Act and to provide for certain other measures](#), 1st Session, 42nd Parliament.
2. [Air Canada Public Participation Act](#), R.S.C. 1985, c. 35 (4th Supp.).
3. Transport Canada, “[Government of Canada proposes to modernize the Air Canada Public Participation Act](#),” News release, 24 March 2016.
4. [Canada Business Corporations Act](#), R.S.C. 1985, c. C-44.
5. See Air Canada, “[Share Information](#),” *Investors*, for current information on the classes of shares in Air Canada.
6. Marie-Ève Hudon and Élise Hurtubise-Loranger, [Legislative Summary of Bill C-17: An Act to amend the Air Canada Public Participation Act](#), Publication no. 41-1-C17-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 13 December 2012.

7. [Budget Implementation Act, 2009](#), S.C. 2009, c. 2.
8. *Air Canada Public Participation Act*, "[Amendments Not in Force](#)."
9. [Canada Transportation Act](#), S.C. 1996, c. 10.
10. Air Canada, "[Share Information](#)," *Investors*. See also *Canada Transportation Act*, "[Amendments Not in Force](#)."
11. European Commission, [Agreement on Air Transport between Canada and the European Community and its Member States](#). The provisions related to the *Air Canada Public Participation Act* and the *Canada Transportation Act* are found in Annex 2, s. 2.
12. The fifth freedom of the air is

the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State.

See International Civil Aviation Organization, [Freedoms of the Air](#).
13. Air Canada, "[About Air Canada's Aircraft Maintenance Operations](#)," *Industry Facts*, 28 March 2012.
14. [Québec \(Procureur général\) c. Air Canada](#), 2013 QCCS 367 [Unofficial English translation].
15. [Air Canada c. Québec \(Procureure générale\)](#), 2015 QCCA 1789.
16. Bombardier, "[Air Canada and Bombardier Sign a Landmark Order for up to 75 Bombardier C Series Aircraft](#)," News release, 17 February 2016.
17. Government of Quebec, "[Acquisition d'appareils de la Série C par Air Canada – Des retombées économiques importantes pour l'industrie aérospatiale québécoise](#)," News release, 17 February 2016.
18. The Supreme Court controls which cases it hears. The application to appeal (or "leave to appeal") is the process through which the Supreme Court decides whether to hear a case. The Supreme Court has not yet decided if it will hear Air Canada's appeal. For more information about the Supreme Court, see Supreme Court of Canada, [Role of the Court](#).
19. Supreme Court of Canada, [Air Canada v. Attorney General of Quebec, et al.](#), Docket 36791.
20. Air Canada, "[Air Canada Partners with Manitoba Government to Help Establish Centre of Excellence for Maintenance in Province](#)," News release, 14 March 2016.
21. *Ibid.*
22. [Aeronautics Act](#), R.S.C. 1985, c. A-2. According to this law, an "aircraft" means "any machine capable of deriving support in the atmosphere from reactions of the air, and includes a rocket."
23. Air Canada, "[Air Canada Comments on Bill to Amend the Air Canada Public Participation Act](#)," News release, 24 March 2016.
24. Conseil du patronat du Québec, "[Modification de la Loi sur la participation publique au capital d'Air Canada : un amendement conséquent avec les ententes conclues au niveau provincial](#)," News release, 24 March 2016.
25. Fédération des travailleurs et travailleuses du Québec [FTQ], [La FTQ](#).
26. FTQ, "[Projet de loi sur Air Canada – Le gouvernement Trudeau lâche les emplois à Montréal!](#)," News release, 24 March 2016 [Translation].
27. *Ibid.* [Translation].

28. FTQ, "[Emplois en entretien et en révision d'avions : La FTQ dépose un recours à la Cour supérieure](#)," News release, 11 March 2016.
29. "[Ex-Aveos workers launch class-action lawsuit against Air Canada, governments](#)," *Globe and Mail*, 5 April 2016.
30. Ibid.
31. See, for example, "[Québec veut freiner le projet de loi sur l'entretien chez Air Canada](#)," *ICI Radio-Canada*, 21 April 2016; and François Desjardins, "[Air Canada : Pas si vite!](#)," *Le Devoir*, 22 April 2016.