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THE SPEAKER OF THE SENATE

Ottawa

Mr. Speaker,

Pursuant to subsection 67(1) of the *Official Languages Act*, I am pleased to present to you, for tabling in the Senate, the enclosed special report to Parliament entitled *Air Canada: On the road to increased compliance through an effective enforcement regime*.

Yours respectfully,

Graham Fraser

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There is hardly a technical or administrative problem in language reform that Air Canada could not solve if its attitude were different. From the start, the Corporation's approach to language has been fearful, defensive and negative. No wonder so many of its employees seem to have the impression that respecting the official language preferences of paying passengers on the State airline is not a high priority. And no wonder reasonable wishes of its own employees to work at least part of the time in their preferred language have caused near trauma. ¹

Keith Spicer, 1976

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¹ Commissioner of Official Languages, *Sixth Annual Report 1976*, Ottawa, 1977, p. 53.

SUMMARY

As my 10 years in office as Commissioner of Official Languages come to an end, I believe it is important to provide an overview to Parliament of the problem regarding Air Canada's compliance with the *Official Languages Act* (the Act).

Like my predecessors, I have used the various powers conferred on me under the Act to try to compel Air Canada to better fulfill its language obligations to the travelling public and have had little success. After hundreds of investigations and recommendations, after an in-depth audit and after two court cases—including one that went to the Supreme Court of Canada—the fact remains that my numerous interventions, like those of my predecessors, have not produced the desired results. Of all the institutions subject to the Act, Air Canada is and has always been among those that generate the largest number of complaints. This special report describes the current problems with how the Act is applied at Air Canada and identifies the legislative changes needed to develop an effective method of enforcement.

Air Canada was built with public funds, and Parliament has always maintained that the national airline's activities should reflect Canada's bilingual nature. In 1988, when Air Canada was privatized in order to compete financially and commercially with other airlines, Parliament adopted the *Air Canada Public Participation Act* to ensure that the national airline was subject to the *Official Languages Act* and retained all of its official languages obligations.

More than a quarter of a century later, and following Air Canada's many reorganizations to protect its financial and commercial interests, it is time to ask whether the current language regime is ensuring the language rights of the travelling public and of the employees of Air Canada's subsidiaries and sister companies. During my 10 years as Commissioner, I have reported to Parliament on the urgent need to amend the *Air Canada Public Participation Act* in order to fill certain legal voids that have existed since Air Canada underwent a major restructuring in 2003.

This report provides an overview of my interventions with Air Canada and summarizes the work of my five predecessors as well as the findings of the parliamentary committees who have also looked into the airline's compliance problems.

I believe that it is now no longer enough to make recommendations following investigations or audits nor is it enough to report on Air Canada's compliance in annual reports to Parliament. Sometimes the legal route is the only way to go when federal institutions do not meet their language obligations. However, the commissioners of official languages have gone to court against Air Canada, and compliance has not improved as a result. I therefore propose that the *Air Canada Public Participation Act* be amended in order to clarify some of Air Canada's language obligations and to strengthen enforcement measures in cases where the airline does not respect the language rights of the travelling public or of its employees. For this purpose, I present some potential

solutions to help guide official languages parliamentary committees in their examination of this report.

This special report to Parliament is the last tool I have at my disposal. In it, I propose different options to modernize the enforcement scheme for Air Canada. I also recommend that Parliament refer this report for study on an urgent and priority basis to either of the two standing committees on official languages.

SECTION 1 — AIR CANADA: ON THE COMMISSIONERS' RADAR SINCE THE ADOPTION OF THE *OFFICIAL LANGUAGES ACT*

Introduction

For nearly 50 years, Air Canada has been subject to the entire *Official Languages Act*, first as a Crown corporation under the 1969 *Official Languages Act*, and then under section 10 of the *Air Canada Public Participation Act* after the airline was privatized in 1988.

Created by Parliament in 1937, Air Canada has always been a symbol of Canadian identity because it was built with public funds and because it has "Canada" in its name and a maple leaf on its logo. As my predecessor Maxwell Yalden said back in 1977:

Air Canada is one of the most visible federal institutions vis-à-vis a readily identifiable sector of the Canadian population, the travelling public. As such, its obligation to meet the letter and spirit of the *Official Languages Act* is of particular significance².

Although it is no longer a Crown corporation, Air Canada is still a national symbol. Linguistic duality is one of the fundamental values that have shaped our country's history and identity since Confederation. It is therefore not surprising that, since 1969, my predecessors have used all of their powers to ensure that Air Canada fully meets its language obligations.

AIR CANADA'S TRANSFORMATION AND CHANGES IN ITS LANGUAGE REGIME

Air Canada has gone through a number of reorganizations since 1969. First, the national air carrier acquired several regional airlines³ in the 1990s. In 2001, after it was privatized, it acquired Canadian Airlines International Limited and Canadian Regional Airlines Limited. In 2003–2004, it went through major restructuring, which resulted in its operational structure being spun off into separate legal entities. These changes created ambiguities in the interpretation and application of the obligations set out under the Act.

For example, after the 2004 restructuring, some Air Canada divisions, such as Air Canada Technical Services, Air Canada Cargo and Air Canada Ground Handling Services, became limited partnerships that reported directly to the new holding company, ACE Aviation Holdings Inc., and no longer to Air Canada. In 2008, Air Canada sold nearly all of its shares in Air Canada Technical Services to a foreign consortium, which became Aveos, while a number of its employees were still on loan to that company. Aveos ceased operations in 2012, before I had completed my investigation into the language rights of Air Canada employees on loan to Aveos.

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² Commissioner of Official Languages, *Annual Report 1977*, Ottawa, 1978, p. 45.

³ Air BC, Air Ontario, Air Nova.

The restructuring had an impact on the language rights of Air Canada employees and the effectiveness of my powers to ensure compliance with the Act. In 2004, Jazz (a subsidiary of Air Canada subject to the Act prior to the restructuring) also became a separate entity, and Air Canada sold off its shares in 2008. Various routes that used to be operated by Air Canada and its subsidiaries are now operated by Jazz, a third party acting on behalf of Air Canada through a commercial agreement.

As was the case for Air Canada Technical Services and Jazz, the corporate relationships between Air Canada and its divisions and subsidiaries can change at any time, resulting in ambiguities or voids in the application of the Act within a new structure. For example, because Jazz is not directly subject to the Act, the Commissioner of Official Languages cannot issue recommendations to it or take it to court. This situation has made it more difficult to investigate complaints, which in turn has resulted in ongoing problems in terms of compliance with the Act.

Before the 1988 *Official Languages Act* came into force, the first few commissioners did not have the right to apply for a court remedy, as currently allowed under Part X of the Act. They therefore ensured compliance with the Act mainly by investigating complaints and in their role as ombudsman. Although Air Canada has been issued recommendations by each and every one of the commissioners of official languages on numerous occasions over the past five decades, it also has the singular distinction of being the only organization subject to the Act that has been taken to court during the term of each of the commissioners since 1988.

COMPLAINTS: AIR CANADA AT THE TOP OF THE LIST

Air Canada is regularly in the top five federal institutions with the most complaints.⁴ With respect to service to the public, a number of investigations conducted by the Commissioner showed that inflight and ground services are not always of equal quality in both official languages at all points of service and on all bilingual routes.

Among the reasons given to explain its compliance issues, Air Canada has often cited the acquisition of Canadian International Airlines Limited and the number of unilingual employees who joined its workforce in 2001. The air carrier has also perennially blamed the seniority clauses in the collective agreements for its inability to assign bilingual staff to strategic locations. In addition, it has responded to the Commissioner's investigations and audits by focusing on the low number of official languages complaints relative to the high number of the airline's points of contact with the travelling public.

⁴ See, for example, the Commissioner of Official Languages' annual reports from 2012–2013 (pp. 27–28), 2007–2008 (p. 101), 2006–2007 (p. 63) and 2005–2006 (p. 86).

And so despite the passing years and repeated interventions by the commissioners of official languages, the situation has not changed much, and setbacks have been much more frequent than progress. As things currently stand, systemic problems are a barrier to lasting improvements.

ONGOING SYSTEMIC PROBLEMS

Nearly all of the complaints filed with the Office of the Commissioner against Air Canada concern the lack of services in French. In only his third annual report to Parliament, the first Commissioner stated that he had "received a number of complaints concerning lack of services in French by flight attendants, lack of French reading material on board, and public announcements by pilots and flight attendants in English only." In 1972–1973, the lack of services in French was reported on various flights such as the Montréal–Ottawa, Sept-Îles–Montréal and Ottawa–Winnipeg routes. Nearly 45 years later, complaints are still being filed about the same problems.

When there are many similar complaints, even about flights that clearly have language obligations...

On February 16, 2006, service in French was not available from the only flight attendant on board Air Canada flight AC8753 from Montréal to Rouyn-Noranda, Quebec.

Around 12:45 p.m., on December 9, 2009, the flight attendant did not make an active offer of service in both official languages and did not provide service in French on board Air Canada flight AC8991 from Moncton to Montréal, even though the complainant insisted on being served in French.

On March 11, 2010, around 7:00 p.m., service in French was not available from the flight attendant on board flight AC8742 from Montréal to Bathurst, New Brunswick.

On December 12, 2014, on board flight AC8759 from Montréal to Rouyn-Noranda, Quebec, bilingual active offer of service and service in French were not available from the flight attendant. When the person asked for the time and a drink, the flight attendant did not understand and responded that he only spoke English. In addition, all the safety instructions (exits, lifejacket) were given by this flight attendant in English only.

⁵ Commissioner of Official Languages, *Third Annual Report 1972–1973*, Ottawa, 1974, p. 123.

On May 12, 2015, bilingual active offer of service and service in French were not available from the flight attendant on board flight AC8739 from Bathurst, New Brunswick to Montréal. In addition, the information provided in English by the pilot was not translated for the French-speaking passengers.⁶

After 10 years in office, I have been able to draw certain conclusions, based on both my experience as Commissioner from 2006 to 2016 and the analyses conducted by my predecessors:

- Since 1969, Air Canada has always been the subject of a high number of complaints.
- The complaints concern Air Canada, its subsidiaries and third parties that act on its behalf (e.g., regional carriers and Jazz).
- The vast majority of complaints are about language of service to the public, on the ground and in the air.
- Complainants also mention the negative attitude they get from Air Canada employees when they request service in French.

Once again, this last point is not new. In 1972–1973, Commissioner Spicer reported the following: "Several French-speaking complainants said they had been treated at the Ottawa Airport in a discourteous manner by counter personnel who made no attempt to call on their French-speaking colleagues for assistance."⁷

What if Air Canada treated linguistic duality as an asset instead of a constraint?

On January 31, 2015, active offer of service in both official languages and service in French were not available on board flight AC875 from Frankfurt to Montréal from a flight attendant who addressed passengers only in English when distributing snacks. When the person who filed the complaint asked the flight attendant whether she spoke French, she said no and did not offer to seek assistance from a bilingual colleague. In addition, she told the complainant that this flight was an Air Canada flight, not an Air Quebec flight.⁸

On March 25, 2015, a passenger who wanted to exchange a ticket went to the Air Canada check-in counter at Toronto's Billy Bishop Airport and spoke to the

⁶ Examples of complaints made by travellers.

⁷ Commissioner of Official Languages, *Third Annual Report 1972–1973*, Ottawa, 1974, p. 128.

⁸ Complaint summary prepared by the Office of the Commissioner as part of the notice to the institution.

agent in French. The agent responded, "English." The passenger expressed a desire to be served in French, and the agent said, "You don't speak English?" The passenger switched to English and responded in the affirmative, but repeated the request to be served in French. The employee said that she did not speak French and added that she could serve the passenger in English, as well as in three other foreign languages.⁹

In the course of the investigations conducted by the Commissioner of Official Languages, Air Canada's responses to the complaints have been similar and repetitive. In response to my recommendations, the airline usually states that it followed up with the employee concerned, sent out a general reminder about its language obligations or reminded the employee of Air Canada's language policy on service to the public, which stipulates that an employee who is not able to provide service in the client's preferred official language must immediately seek assistance from a bilingual colleague. Day after day, I conduct investigations and I make recommendations. And year after year, I continue to receive complaints about the lack of service on board the same designated bilingual flights and at the same designated bilingual airports.

With respect to language of work, each complaint I receive is often an indication of a widespread problem within the organization. Over the years, the complaints filed by employees point to the existence of recurrent problems with work tools, training and supervision, which are often provided in English only. Nearly all of these complaints come from French-speaking employees in Quebec.

FIVE DECADES OF INTERVENTIONS WITH AIR CANADA

All six commissioners of official languages have intervened with Air Canada management, parliamentarians and the government to improve the airline's compliance with the Act. In addition to being the subject of complaint investigations, Air Canada's situation has been examined in the commissioners' annual reports, audits, special investigations and report cards. Below are the highlights of a saga that has continued for 45 years.

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⁹ Complaint summary prepared by the Office of the Commissioner as part of the notice to the institution.

KEITH SPICER

As early as 1970, Air Canada headed the list of federal institutions with the highest number of complaints. This would also be the case in 1976, 1979, 1980, 1982 through 1985, 1987, 1992, 1997, 1998, 2001, 2004 through 2008, 2010 and 2012 through 2014.

From 1970 to 1972, Commissioner Spicer made 59 recommendations to the national airline in four special studies. ¹⁰ Essentially, he recommended that Air Canada actively offer service in both official languages, as required by the Act.

In 1976, a special study containing 172 recommendations was published on the language of work at Air Canada headquarters in Quebec, the Atlantic provinces and the National Capital Region.

At the end of his term, Commissioner Spicer noted that the airline's results did not measure up to the efforts invested by his office:

Seven years, roughly 371 complaints and some 232 recommendations later, one hardly knows what else to suggest for improvement. We can hope, however, that 1977 for Air Canada will be a year of greater linguistic thrust. To many Canadians, Air Canada is a "national dream" yet unfulfilled¹¹.

MAXWELL YALDEN

In 1978, Commissioner Yalden explained that "it is difficult to strike a balance between a fair assessment of the numerous efforts the Company has made and a statement about its continuing shortcomings." ¹² He commended the installation of easily identifiable bilingual counters as a temporary measure at Ottawa International Airport, but criticized Air Canada's "weak, non-existent or poorly utilized" bilingual capacity at many airports. ¹³

In 1980, an audit of Air Canada's services to the public and technical training programs highlighted a number of improvements, specifically in terms of recruiting bilingual staff and enhancing ground services in Moncton, Québec City, Montréal and Ottawa. However, the audit revealed major weaknesses in Toronto, Fredericton, Saint John's, Yarmouth, Timmins, Victoria and New York.

In 1981, Toronto became the thirteenth airport at which some Air Canada counters were staffed by bilingual employees. However, the Commissioner found that at certain times, there were no bilingual employees on duty.

¹⁰ Special Study of Air Canada Operations in Ottawa, 1970 (4 main recommendations); Bilingual Service to the Travelling Public at Air Canada Facilities in Paris and London, 1971 (4 recommendations); Air Canada: Moncton District, New Brunswick: Special Study on the Language of Service, September 1972 (17 recommendations); A Special Study of Air Canada: Headquarters, March 1972 (34 recommendations).

¹¹ Commissioner of Official Languages, Sixth Annual Report 1976, Ottawa, 1977, p. 56.

¹² Commissioner of Official Languages, *Annual Report 1978*, Ottawa, 1979, p. 85.

¹³ Commissioner of Official Languages, *Annual Report 1978*, Ottawa, 1979, p. 85.

In 1983, Commissioner Yalden published an audit on service to the public on board flights, at airports and from reservation services. The audit, which noted some encouraging efforts, contained 23 recommendations.

D'IBERVILLE FORTIER

Air Canada was privatized during the summer of 1988. In his annual report of that year, Commissioner Fortier stated that Air Canada was still not optimizing the use of its bilingual staff and that it needed to continue its efforts to hire bilingual employees.

In 1989, he noted that service was not always easy to obtain in the official language of the linguistic minority and that the assignment of bilingual staff at various points of service (airports, ticket counters and reservations) still seemed to be inadequate. He also mentioned problems with Air Canada's subsidiaries.

In 1990, Commissioner Fortier published an audit on the language-of-work situation in Quebec, the language of in-flight service and the policy and control measures for these two aspects of the official languages program. The audit found that the language-of-work problems resulted from the fact that English was the predominant language in the field of aeronautics. However, it also found that service in both languages on board Air Canada flights had been improving every year and noted the efforts to recruit bilingual staff and ensure that employees were aware of their language obligations. The audit report contained 30 recommendations for Air Canada.

The Commissioner also observed, however, that Air Canada continued to generate a large number of complaints about the lack of bilingual services at airports. He went to court to resolve an issue concerning the airline.¹⁴

In 1991, Commissioner Fortier noted a number of shortcomings regarding the announcements in major airports and a lack of service in French at Air Canada counters at airports in Halifax, Moncton, Ottawa, Toronto, Winnipeg and Edmonton.

That same year, the Commissioner conducted an audit of Air Canada's ground services in the Atlantic region. It found that, despite the airline's efforts to improve its bilingual services, various weaknesses still remained in all Atlantic region centres. Although the situation was generally satisfactory in Moncton and Halifax, it was fair or poor in the other cities visited. The audit report contained 14 recommendations, including some that were essentially the same as previous recommendations made over the years.

 $^{^{\}rm 14}$ This case was settled out of court the following year.

VICTOR GOLDBLOOM

In 1992, discussions were held with Air Canada and the Treasury Board about an issue that was the subject of legal proceedings and an out-of-court settlement.

In 1993, Commissioner Goldbloom conducted an in-depth investigation on the lack of service in French by Air Canada's regional carriers. He made recommendations to Air Canada about the shortcomings that had been identified.

That same year marked the release of the follow-up to the 1990 audit on Air Canada's Dorval base. The audit follow-up found that out of the 23 recommendations that were examined, 1 no longer applied, 7 had been implemented, 7 had been partially implemented and 8 had not been implemented.

In 1994, Commissioner Goldbloom reported that the Toronto and Halifax airports had been the subject of several complaints. He made one recommendation regarding Air Canada's bilingual services at Halifax International Airport.

In 1995, the Commissioner noted two major backlogged files: services provided by Air Canada's regional carriers and services provided by Air Canada at airports, particularly in Toronto and Halifax.

In 1996, Commissioner Goldbloom initiated legal proceedings against the national airline in three cases regarding the following issues: Air Canada's ground services at Halifax and Toronto international airports, Air Ontario's in-flight services, and the scope of Air Canada's responsibility with respect to its regional carriers under the Act.

In 1997, Air Canada mechanics filed 110 complaints, which the Commissioner determined to be founded, about two technical exams that were offered in English only. The Commissioner also conducted an in-depth investigation and issued recommendations on Air Canada's in-flight services on routes for which there was significant demand for services in both official languages.

In 1998, Commissioner Goldbloom reported that Air Canada's lack of cooperation often impeded his investigations.

DYANE ADAM

In 1999, in response to numerous complaints, Commissioner Adam conducted an audit of Air Canada's reservations system. She made five recommendations to Parliament.

In 2000, the amendments to section 10 of the *Air Canada Public Participation Act* through Bill C-26 clarified the language obligations applicable to Air Canada and its subsidiaries. The Commissioner withdrew the application for a reference before the Court that had been initiated by her predecessor to clarify this issue.

In 2002, Commissioner Adam reported on the results of a complaint about French-speaking pilots being underrepresented at Air Canada.

In 2004, the Commissioner recommended that Transport Canada make legislative amendments to preserve and protect the language rights of the travelling public and Air Canada employees, regardless of the changes made to the structure and organization of the air transportation industry.

In 2006, Air Canada once again found itself at the top of the list of federal institutions that generate the most complaints, the number of which had decreased during its restructuring.

GRAHAM FRASER

Although Air Canada received an overall rating of *C* on its 2007–2008 report card, it got a *D* for service to the public, mainly because an active offer was made in only 8% of cases observed.

In 2009, I reiterated the recommendation made by Commissioner Adam in 2004 on the need for a bill to clarify Air Canada's language obligations.

In 2010, I reported that Air Canada had proved that it could meet the challenge of being the official airline of the Winter Olympic Games by investing the necessary resources, but that there continued to be chronic problems in serving French-speaking passengers.

In 2010–2011, my office received 438 language-of-work complaints against Air Canada about situations at Air Canada Maintenance and Aveos Fleet Performance Inc. in the Montréal area.

In 2011, I published an audit of service to passengers at seven airports and two call centres, and made twelve recommendations, a number of which had already been made in the past.

In 2012–2013, I reported that the observation exercises conducted by my office showed that although Air Canada had significantly improved its performance since 2008, more progress needed to be made, especially in the area of in-person active offer. I also emphasized that there was an urgent need for Parliament to fill the legal void that had existed since Air Canada's restructuring and to clarify the language obligations of third parties acting on Air Canada's behalf.

In 2014–2015, I was disappointed to learn that Air Canada had implemented only one of the 12 recommendations that I had made in my 2011 audit report and that it had not fully implemented the action plan that it had provided during the initial audit. I concluded that Air Canada still had a lot of work to do to ensure full compliance with the Act.

In December 2015, Air Canada submitted a new version of its official languages action plan to my office. This plan partially addresses some of the recommendations.

OBSERVATIONS ON THE INTERVENTIONS

This overview of nearly half a century of interventions is disappointing in many respects. The same recommendations were often repeated from one investigation to another, from one audit to another and from one commissioner to another, without ever leading to a satisfactory resolution.

For example, between the time I published my audit report in 2011 and the time I released the follow-up study, I repeated Recommendation 5 word-for-word from my audit in 48 investigation reports. Every time I repeated this recommendation, I was optimistic that it would be implemented, as the action plan submitted by Air Canada as part of my audit seemed to imply. However, this recommendation was only ever partially implemented, and I did not see any concrete results in the field during my follow-up. The situation raised in the 48 complaints about active offer and the availability of service in the official language of the linguistic minority has still not been resolved.

It is striking to note that all of the commissioners used a variety of interventions to study Air Canada's compliance problem in detail and to make specific recommendations. Despite promising action plans from the airline, Air Canada still has systemic problems, and partially implementing a few recommendations has rarely produced the desired results. Every year sees a succession of the same complaints being filed, while the audits and observations continue to be produced.

COURT CASES

In 1988, Parliament added a tool in the new *Official Languages Act*. Under Part X of the Act, the Commissioner himself could now apply to the Federal Court for a legal remedy, with the complainant's consent, or participate as an intervener in or as a party to any proceedings initiated by a complainant.

Air Canada is the *only* institution subject to the Act that has been taken to court by all of the commissioners since 1988. In total, we have participated in 14 court cases against Air Canada, ¹⁵ either as an intervener or as a party to the proceedings. Each time, Air Canada found ingenious ways to raise new legal arguments before the Court.

THE SAGA OF SUBSIDIARIES AND REGIONAL CARRIERS

The language obligations of subsidiaries and regional carriers have been the subject of many court cases since Air Canada was privatized and acquired a number of regional airlines. These acquisitions resulted in numerous complaints about unequal service in French by Air Canada subsidiaries. The airline considered its subsidiaries to be independent entities, while the Office of

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¹⁵ Trevett v the Queen (Air Canada), T-927-89; The Commissioner of Official Languages v Air Canada (minority press), T-2443-90; Canada (Commissioner of Official Languages) v Air Canada (Halifax), T-1989-96; Canada (Commissioner of Official Languages) v Air Canada (Pearson Airport), T-2043-96; The Commissioner of Official Languages v Air Canada (Air Ontario, Ms. Leboeuf), T-2536-96; Canada (Commissioner of Official Languages) v Air Canada (1998) 152 F.T.R. 1 (reversed on appeal); Canada (Commissioner of Official Languages) v Air Canada (1999), 167 F.T.R. 157, [1999] FCJ No 738; Air Canada (Re) (In the case involving the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, etc.); Thibodeau v Air Canada, [2006] 2 C.F. 70; Thibodeau v Air Canada, 2007 FCA 115; Thibodeau v Air Canada, 2011 FC 876; Air Canada v Thibodeau, 2011 FCA 343; Air Canada v Thibodeau, 2012 FCA 246; Thibodeau v Air Canada, 2014 SCC 67.

the Commissioner concluded that they had the same language obligations as their owner. This difference of opinion hindered the investigation of complaints.

In 1997, Commissioner Goldbloom filed an application for reference before the Federal Court to clarify the obligations of Air Canada subsidiaries under the *Official Languages Act*. The Commissioner stated that because the subsidiaries are acting on behalf of Air Canada, they should have to at least comply with the provisions of the Act that deal with service to the public (Part IV). At the time, some 400 complaints had to be put on hold until the issue was addressed by the Court.

In the end, Parliament amended section 10 of the *Air Canada Participation Act* and resolved the situation before a decision was handed down. The new provision required the airline to ensure that all of its subsidiaries (of which it owns more than 50% of the shares) comply with Part IV of the *Official Languages Act* with respect to air services, including incidental services.

PRECEDENCE OF THE ACT OVER COLLECTIVE AGREEMENTS

In 1996, legal proceedings were filed in two cases to compel Air Canada to provide bilingual services at the international airports in Toronto and Halifax. Commissioner Goldbloom wanted the airline to provide ground services in both official languages at all times at all points of service: check-in counters, ticket counters, waiting rooms, boarding gates, announcements, etc.

In response, Air Canada argued that it was bound by the provisions of the collective agreement and that the seniority rules prevented it from assigning bilingual employees to bilingual points of service. The Commissioner maintained that the airline could not use collective agreements to circumvent its language obligations. The main issue of the case—the lack of bilingual ground services at the Toronto and Halifax international airports—was the subject of a memorandum of understanding between the Commissioner and Air Canada. The issue of whether the collective agreement took precedence remained unresolved.

The issue of collective agreements was raised again during legal proceedings initiated by Michel Thibodeau in 2002. In response to the identified violations, Air Canada once again argued that it was impossible to assign bilingual employees to bilingual routes because of collective agreements. In addition, it claimed that the Act imposed an obligation of means, but not of result, meaning that in terms of compliance, it was responsible only for exercising due diligence and not for achieving a specific result. This time, the Federal Court put an end to the debate by clearly and unequivocally stating:

We know that the [Official Languages Act] applies to Air Canada. The collective agreements under the aegis of the [Canada Labour Code] must not be incompatible with the implementation of the [Official Languages Act]'s purpose. If some incompatibility develops, the [Official Languages Act] will prevail over the provisions of the collective agreement¹⁶.

Air Canada decided to appeal the decision. The Federal Court of Appeal dismissed the appeal and described it as seeming "far more oppressive than deserving." The final judgment was handed down seven years after the incident that resulted in the complaint.

Systemic problems

During a second court case initiated by Michel and Lynda Thibodeau in 2010, Air Canada acknowledged that it had failed to meet its language obligations, but denied that it had a systemic problem. To prove this, before all instances, Air Canada presented data citing the number of complaints relative to the number of points of contact with the travelling public:

Over the last three years, Air Canada has carried about 32,300,000 passengers a year (including on flights operated by Jazz) with about five to six points of contact with an Air Canada employee per passenger and that the complaint ratio was an average of 53 complaints a year (for 2007 to 2009) for at least 161,500,000 points of contact a year, that is 0.000033 percent at the most 18.

In the light of the evidence, Air Canada vigorously rejects any allegation of there being systemic problems. It admits that occasional breaches of its duties may occur, but submits that, generally, it is able to comply with them and that the situation therefore hardly shows a systemic problem that calls for institutional orders¹⁹.

During the same case, however, the complainants succeeded in demonstrating that some of the routes for which there is significant demand were not on the list of bilingual routes in the system used to assign flight attendants, which explained why there was no bilingual in-flight staff to provide service in French.

During our investigation, we have discovered that the routes on which there is significant demand on the basis of the 2007 surveys had not been programmed into our flight assignment system. Jazz is currently implementing the necessary measures so that these routes are identified in the flight assignment system²⁰.

¹⁶ Thibodeau v Air Canada, [2006] 2 FCR 70, para. 97.

¹⁷ Air Canada v Thibodeau, 2007 FCA 115, para. 27.

¹⁸ *Thibodeau v Air Canada*, 2011 FC 876, paras. 127-128.

¹⁹ Thibodeau v Air Canada, 2011 FC 876, para. 137.

²⁰ Thibodeau v Air Canada, 2011 FC 876, para. 116.

This court case also clarified an important point: although the lack of bilingual staff had been an ongoing problem after Air Canada was privatized in 1988, this was currently no longer the case.

Ms. Dugas stated that Air Canada has a sufficient number of bilingual flight attendants to provide services in French on all flights on which there is significant demand for services in French, on both automatically and survey-designated flights. In airports, Air Canada has a sufficient number of bilingual employees to ensure that service can always be provided to passengers in both official languages²¹.

During the proceedings, Air Canada also acknowledged that Jazz also had enough staff to provide services in French on board all its flights on which there is significant demand and which start or finish in Ontario, Quebec or the Maritimes.

Therefore, all Air Canada has to do from now on is manage existing resources properly and assign bilingual employees to strategic locations in order to ensure that service in both official languages is available at all times. It is not enough for federal institutions merely to have a sufficient number of bilingual employees: these employees must be assigned to strategic locations so that the institution's language obligations are met. To manage bilingual resources effectively, senior management must be ready and willing to work to make linguistic duality a priority on a day-to-day basis, both for the organization and for all its employees.

OBSERVATIONS ON THE COURT CASES

The many court cases involving Air Canada and the commissioners of official languages helped to clarify certain legal issues. They also made me realize that Air Canada will not hesitate to challenge the application of the Act and to use all of the means at its disposal to vigorously defend itself before the courts. The legal remedy provided for in the Act has therefore resulted in valuable and useful case law regarding Air Canada. However, it has not actually helped to improve the airline's compliance in terms of official languages.

²¹ Thibodeau v Air Canada, 2011 FC 876, para. 125.

SECTION 2—AIR CANADA: SCRUTINIZED BY PARLIAMENT SINCE PRIVATIZATION

PARLIAMENTARY STUDIES

In addition to the various steps taken by the Office of the Commissioner of Official Languages, Parliament has also paid a great deal of attention to Air Canada, specifically through its standing committees on official languages, which examined the airline's compliance problems on more than one occasion.

In 1999, the Standing Senate Committee on Transport and Communications reiterated the importance of maintaining Air Canada's obligation to provide service in English and French to Canadians, as required by the *Official Languages Act*. ²² At the same time, the House of Commons Standing Committee on Transport published a report reiterating the importance of linguistic duality for safety:

Safety considerations include the presentation of flight safety and other relevant information in a language easily understood by the air traveller. In this regard, linguistic considerations exist. Recognizing that linguistic duality is fundamental to the identity of Canada, the *Policy Framework* indicates that "the government will ensure that the *Official Languages Act* continues to apply in the case of Air Canada or any future dominant carrier, and that the Act is effectively implemented.²³"

As part of its study on bilingual services provided by Air Canada, the Standing Joint Committee on Official Languages tabled an interim report in June 2001 in which it emphasized that it was both important and urgent for Air Canada and its subsidiaries to provide Canadians with services in both official languages. When it completed its study in February 2002, the Joint Committee tabled its final report, which contained 16 recommendations to ensure that Air Canada could comply with the Act. The Joint Committee also reiterated some of the problems that successive commissioners of official languages had identified over the years and that constituted major barriers to Air Canada's full compliance with the Act. The Joint Committee therefore recommended that the method of enforcing the Act be reviewed and strengthened, specifically through sanctions, penalties and other

²⁴ Parliament of Canada, Standing Joint Committee on Official Languages, <u>Air Canada: Good Intentions Are Not Enough!</u>, Ottawa, February 2002.

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²² Parliament of Canada, Standing Senate Committee on Transport and Communications, <u>Airline Industry</u> <u>Restructuring in Canada</u>, Ottawa, December 1999. <u>Recommendation 16</u>, <u>Bilingualism</u> – The Committee recommends that under a dominant carrier or owner scenario in Canada, all operations directly serving the public carried out by that carrier or owner and its subsidiaries be made subject to the <u>Official Languages Act</u>.
²³ Parliament of Canada, House of Commons Standing Committee on Transport, <u>Restructuring Canada's Airline Industry: Fostering Competition and Protecting the Public Interest</u>, Ottawa, December 1999.

measures, in order to give the Commissioner the necessary tools to monitor compliance with the Act:

Strengthening the system for carrying out Air Canada's linguistic obligations

The Committee observes that, more than 30 years after the enactment of the first *Official Languages Act*, Air Canada is still not complying fully with its linguistic obligations. It notes that Air Canada has repeatedly violated the same provisions of the Act, despite the recommendations of successive commissioners of Official Languages. It also notes the difficulties of enforcing a quasi-constitutional statute based on one of the key values of Canadian society.

RECOMMENDATION 11

The Committee recommends that the Minister of Transport amend section 10 of the *Air Canada Public Participation Act*, the *Aeronautics Act* and any other related legislation to ensure that the linguistic regulations and provisions applying to Air Canada are adequate and provide an effective implementation regime, including sanctions, penalties and other non compliance measures.²⁵

In response to the criticisms made against it in the Joint Committee's February 2002 report, Air Canada management submitted an official languages action plan whose actions and proposed outcomes were spread out over 10 years and whose implementation was conditional on federal funding being granted for language training. Before implementing this action plan, Air Canada filed for bankruptcy protection under the *Companies' Creditors Arrangement Act* for approximately one year and changed its corporate structure significantly.

Air Canada appeared again before the House of Commons Standing Committee on Official Languages after its restructuring. To explain its performance on official languages, the airline stated that its obligations "are different and more onerous than those imposed on other federally-regulated institutions" and again asked for the federal government to provide the necessary financial resources to fulfill its mandate in terms of official languages. Air Canada had previously brought up the idea of standardizing language obligations for all airlines, and the House of Commons Standing Committee on Transport pondered this possible solution in its 2005 report, *Air Liberalization and the Canadian Airports System;* however, no recommendations were made on this subject.

²⁵ Parliament of Canada, Standing Joint Committee on Official Languages, <u>Air Canada: Good Intentions Are Not Enough!</u>, Ottawa, February 2002.

²⁶ Parliament of Canada, House of Commons, Standing Committee on Official Languages, *Evidence*, 38th Parliament, 1st Session, Meeting No. 7, November 25, 2004, evidence of Duncan Dee, Senior Vice-President, Corporate Affairs, Air Canada.

In 2006, the House of Commons Standing Committee on Official Languages published a report²⁷ as part of a study on the application of the *Official Languages Act* to ACE Aviation Holdings Inc. following the restructuring of Air Canada. In the study, the Committee emphasized the need to introduce a new bill to ensure that Air Canada retains its language obligations after restructuring.

Although the government followed up on this request by introducing a new bill on October 18,²⁸ the bill died on the Order Paper, just like its predecessor, Bill C-47. Two other bills were introduced, but neither has reached second reading to date, which has resulted in a gradual erosion of language rights throughout the course of the changes within Air Canada and its affiliates.

After inviting Air Canada representatives for another appearance, the Standing Senate Committee on Official Languages tabled a report in June 2008 on the bilingualism of the airline's staff.²⁹ According to the evidence given by Air Canada representatives, hiring bilingual staff outside the province of Quebec, the National Capital Region and Moncton continued to be a "significant challenge." The airline argued that despite being subject to the same language obligations as federal institutions, it did not benefit from the same funding or the same tools that these institutions have to meet their obligations under the Act. The Committee's report contained four recommendations for Air Canada and one for the government.

In 2009 and 2010, Air Canada appeared again before the House of Commons Standing Committee on Official Languages. This time, the airline once again explained the high number of complaints from the travelling public by citing the number of unilingual English-speaking employees and the lack of financial support from the federal government for language training for staff.

The Minister of Transport, Infrastructure and Communities was also called to appear before the Committee. He highlighted Air Canada's efforts to meet its obligations, particularly during the 2010 Olympic and Paralympic Winter Games in Vancouver. The Minister also recognized the need to introduce a new bill that would take into account the changes to the airline's corporate structure.

In May 2010, the Committee tabled a report to 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 may study

²⁷ Parliament of Canada, House of Commons, Standing Committee on Official Languages, <u>Application of the Official Languages Act to ACE Aviation Holdings Inc. following the restructuring of Air Canada</u>, Ottawa, June 2006.

²⁸ <u>Bill C-29</u>: An Act to amend the Air Canada Public Participation Act, 39th Parliament, 1st Session, introduced on October 18, 2006.

²⁹ Parliament of Canada, Standing Senate Committee on Official Languages, <u>Bilingual Staff at Air Canada:</u> <u>Embracing the Challenge and Moving Forward</u>, Ottawa, June 2008.

the bill this Spring."³⁰ A year and a half later, the government introduced Bill C-17, which also died on the Order Paper.

In 2011, Air Canada representatives appeared once again before the Standing Senate Committee on Official Languages to provide an update on compliance with their language obligations. This time, the airline took a more reassuring approach.

As you know, the Office of the Commissioner of Official Languages audited our service delivery in both official languages in the fall of 2010. . . .

We welcomed the report of the Commissioner of Official Languages and are pleased that the audit identified the many tools and initiatives put forward by Air Canada not only to meet its obligations under Part IV of the *Official Languages Act* but, above all, to fulfil its commitment to its customers and thereby provide them with quality service in the official language of their choice. . . .

Our most recent Linguistic Action Plan addresses the concerns raised by the Commissioner of Official Languages in the audit and at the same time deals with issues raised in the June 2008 Senate committee report. 31

Basing itself on these statements and an in-depth study of the situation, the Senate Committee published a report in March 2012 entitled *Air Canada's Obligations under the* Official Languages Act: *Towards Substantive Equality*, ³² in which it reiterated its expectations of Air Canada. According to the Committee, the airline had to ensure that its linguistic capability was adequate and its bilingual services were properly planned. The report contained a number of recommendations for Air Canada. The publication of my audit follow-up report would eventually show how little attention Air Canada paid to the recommendations that it had been issued.

³⁰ Parliament of Canada, House of Commons, Standing Committee on Official Languages, <u>Invitation to introduce a bill regarding the application of the Official Languages Act to Air Canada, its subsidiaries and partners</u>, Ottawa, April 2010.

³¹ Parliament of Canada, Standing Senate Committee on Official Languages, *Evidence*, 41st Parliament, 1st Session, November 28, 2011, evidence of Priscille Leblanc, Vice-President, Corporate Communications, Air Canada.

³² Parliament of Canada, Standing Senate Committee on Official Languages, <u>Air Canada's Obligations Under the Official Languages Act: Towards Substantive Equality</u>, Ottawa, March 2012.

BILLS TO CLARIFY AIR CANADA'S OBLIGATIONS

The five bills aimed at clarifying Air Canada's language obligations contained some solutions that today's legislators could pursue.

In 2000, Parliament passed Bill C-26, which amended section 10 of the *Air Canada Public Participation Act* to confirm that the *Official Languages Act* applied in its entirety to Air Canada and to specify the obligations of its subsidiaries. However, when Air Canada restructured in 2004 after its protection under the *Companies' Creditors Arrangement Act* had expired, some of the amendments were rendered obsolete because the subsidiaries no longer existed.

Over the following seven years, four bills were introduced to preserve the language rights of the travelling public and Air Canada employees under the new structure. They all died on the Order Paper.

- In 2005, Bill C-47 reached the Committee Stage before Parliament was dissolved.
- In 2007, Bill C-29 died on the Order Paper after being sent to a parliamentary committee.
- In 2008, Bill C-36 did not get past first reading.
- Bill C-17 was introduced just before the 2011 general election was called.

Therefore, there is currently still a legal void in terms of the language obligations of entities created following Air Canada's restructuring in 2004.

On another front, the Honourable Stéphane Dion introduced a private member's bill in the House of Commons on April 23, 2015, called *An Act to amend the* Carriage by Air Act *(fundamental rights)*. The bill was introduced in response to the Supreme Court of Canada's decision in *Thibodeau v Air Canada*, 33 handed down on October 28, 2014, which stated that the *Montreal Convention* 4 does not permit an award of damages for the breach of language rights during international carriage by air.

Bill C-666, which died on the Order Paper when the most recent election was called, sought to amend the *Carriage by Air Act* in order to specify that it does not restrict the fundamental rights guaranteed under the *Official Languages Act* and the *Canadian Human Rights Act*.

³³ *Thibodeau v Air Canada,* [2014] 3 S.C.R. 340.

³⁴ Convention for the Unification of Certain Rules for International Carriage by Air, 2242 U.N.T.S. 309 [Montreal Convention].

OBSERVATIONS ON PARLIAMENT'S INTERVENTIONS

Despite the many recommendations by parliamentary committees and the many legislative attempts by the government to ensure that the language rights of the travelling public and Air Canada employees are respected, a legal void currently exists and there is an urgent need to fill it. Even though Air Canada is still subject to the Act, the fact remains that the changes that have been made over the years to its corporate structure have been a factor in the erosion of the language rights of the travelling public and Air Canada employees. To ensure that the government fully succeeds in applying the Act to Air Canada, it must make it a priority.

In the next section, I propose some possible solutions to guide Parliament and its committees in their analysis of the changes to the *Air Canada Public Participation Act* that need to be examined.

Section 3 — Possible solutions for a better enforcement scheme

AN OUTDATED REGIME FOR AN ORGANIZATION IN CONSTANT FLUX

In 1988, Parliament adopted the new *Official Languages Act* in order to make it possible to give full effect to linguistic duality, which is a fundamental value at the heart of Canadian identity. The principle of equality that underpins the Act is articulated through the dual objective set out in subsection 16(1) of the *Canadian Charter of Rights and Freedoms* and re-stated in section 2 of the Act, namely equality of use (linguistic access to service) and equality of status (service of equal quality). For these objectives to be realized, the travelling public and employees of Air Canada and its subsidiaries must be able to rely on a legal system that adequately protects their language rights while ensuring that these rights can be enforced. This is not how the current system works, because it was set up for federal institutions and Crown corporations.

Unlike other institutions subject to the Act, Air Canada has been in a state of constant flux. After being completely privatized, it made acquisitions and was restructured a number of times, notably in 2003–2004 after filing for bankruptcy protection under the *Companies' Creditors Arrangement Act*. Even after this restructuring, the airline continued to remake itself, so much so that today's Air Canada is very different from what it was in 1969 or even in 1988. The Act, however, has not changed with respect to Air Canada, and some of the rights and obligations that existed in the past have been eroded over time and transformation.

It is becoming increasingly clear that the current methods of enforcement have had little effect on Air Canada's level of compliance. Consequently, Parliament needs to examine its options if it intends to allow Air Canada to continue to present itself as a Canadian icon. It is therefore important to fill the legal voids that continue to exist and to implement an appropriate enforcement scheme. This is what the Standing Joint Committee on Official Languages recommended in its 2002 report.³⁵

On the 40th anniversary of the Act in 2009, the Fédération des communautés francophones et acadienne came out in favour of giving the Commissioner more power to ensure that the Act is taken seriously by all federal institutions:

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³⁵ Parliament of Canada, Standing Joint Committee on Official Languages, <u>Air Canada: Good Intentions Are Not Enough!</u>, Ottawa, February 2002. RECOMMENDATION 11: "The Committee recommends that the Minister of Transport amend section 10 of the *Air Canada Public Participation Act*, the *Aeronautics Act* and any other related legislation to ensure that the linguistic regulations and provisions applying to Air Canada are adequate and provide an effective implementation regime, including sanctions, penalties and other non-compliance measures."

If we want to ensure that the *Official Languages Act* is taken seriously by everyone, we must explore the possibility of conferring order-making powers on the Commissioner that would enable him to demand corrective measures from federal institutions that do not meet their obligations. The Commissioner could also be given the authority to impose sanctions upon these institutions so as to ensure that corrective measures are effectively implemented. Consider that the new *Official Languages Act* of Nunavut provides for sanctions in cases of discrimination against people who have filed a complaint with the Language Commissioner. This Act also creates an Official Languages Promotion Fund, into which the fines resulting from these sanctions are paid.

This recommendation would require an amendment of the Act and a regular five- or ten-year review of the Act and its Regulations in order to make adjustments if steps that have been taken do not produce the desired results.

All this, in our opinion, would exponentially increase the chances of the *Official Languages Act's* finally being enforced in keeping with the spirit and intention of the legislators who developed it 40 years ago.³⁶

STRENGTHENING ENFORCEMENT WHEN IT COMES TO AIR CANADA

The following options, either separately or together, could strengthen the current enforcement scheme and promote greater compliance with the Act. I hereby submit them to Parliament for consideration.

A. Enforceable agreements

On June 18, 2015, the *Personal Information Protection and Electronic Documents Act* was amended to allow the Privacy Commissioner to enter into compliance agreements ("enforceable agreements") to ensure that an organization agrees to comply with the Commissioner's recommendations following an investigation. The power to enter into this type of agreement could be granted to the Commissioner of Official Languages.

Under a compliance agreement, an organization agrees to take certain measures to bring itself into compliance with the Act. The advantage for the organization is that the Commissioner cannot file legal proceedings as long as the agreement is in effect. However, if the organization fails to live up to its commitments, the Commissioner may, after notifying the organization, apply to the Federal Court for an order requiring the organization to comply with the terms of the compliance agreement.

³⁶ Fédération des communautés francophones et acadienne, <u>The Implementation of the Official Languages Act:</u> <u>A New Approach – A New Vision</u>, Ottawa, November 2009. p. 19.

Although this option would not guarantee success in and of itself, it would still be an improvement over the current system. As I have shown in this report, Air Canada has often made commitments—through action plans, for example—that it has not lived up to. Compliance agreements would make it possible to have a formal record of Air Canada's commitments so that the Commissioner would have direct recourse if concrete measures were not taken.

Compliance agreements would bring certainty and clarity to the process, which are currently lacking, and the option of a court remedy in case of default would add to the tools currently available to the Commissioner.

This method of enforcement, which is currently in effect for my fellow agent of Parliament, the Privacy Commissioner, would be a step in the right direction. However, I believe that it would be effective only if used in conjunction with some of the other options described below.

B. STATUTORY DAMAGES

The *Air Canada Public Participation Act* could be amended to give the Federal Court the power to award damages for violations of certain provisions of the *Official Languages Act*, without the claimant's having to prove an actual loss stemming from the violation. A range of damage awards could be prescribed, setting out minimum and maximum amounts for violations of specific provisions. Within that range, the Federal Court could assess damages based on a number of explicit factors to be taken into consideration.

Statutory damages are appropriate in situations in which it is difficult or impossible for a plaintiff to prove a quantifiable loss as a result of a violation. By setting established ranges or amounts beforehand, statutory damages facilitate the Court's deliberations about appropriate amounts, particularly for non-economic loss such as humiliation resulting from the lack of service in the preferred official language or from the negative attitude of employees. This option could encourage complainants to ensure that their rights are enforced in court, in the appropriate circumstances.

For example, Canada's new anti-spam law³⁷ not only provides for various tools, such as administrative monetary penalties (see option D below), but allows individuals to bring a right of action in court in the case of violations of the *Competition Act* or the *Personal Information Protection and Electronic Documents Act*. Statutory damages established by the anti-spam law range from \$200 for each violation, up to a maximum of \$1 million for each day on which a violation occurred, depending on the provision in question.

³⁷ An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the *Canadian Radio-television and Telecommunications Commission Act*, the *Competition Act*, the *Personal Information Protection* and *Electronic Documents Act and* the *Telecommunications Act*, S.C. 2010, c. 23.

C. FINES

Fines are incentives to comply with the law. To be effective, they must be proportionate to address a range of behaviours, from less serious actions to the most serious ones.

The *Air Canada Public Participation Act* could be amended to include a list of various violations for which fines would be determined based on their seriousness. This option would, however, be applicable only to situations under Air Canada's jurisdiction: for example, when there is no bilingual flight attendant on a route for which there is significant demand.

This type of sanction is not new in the area of language rights. In fact, both Nunavut's *Official Languages Act*³⁸ and Quebec's *Charter of the French Language*³⁹ contain provisions regarding fines that can be imposed by the courts for certain regulatory violations. This type of sanction is also available to other agents of Parliament: the *Access to Information Act*⁴⁰ and the *Lobbying Act*⁴¹ contain provisions for fines for certain violations. Under the *Lobbying Act*, for example, anyone who fails to file a return or knowingly makes any false or misleading statement to the Commissioner of Lobbying is guilty of an offence and liable, on summary conviction, to a fine not exceeding \$50,000.

Because fines already exist in the area of official languages and for some agents of Parliament, this option could be an effective solution to strengthen the current system and dissuade Air Canada from systematically violating the *Official Languages Act*.

D. Administrative monetary penalties

Many federal laws provide for administrative monetary penalties (AMPs), which can be issued in response to non-compliance with the legislation. AMPs are not intended to be punitive; rather, they seek to counterbalance the financial incentives associated with non-compliance. This option encourages future compliance and can discourage other individuals or institutions from breaking the law.

AMPs are imposed by the organization that oversees legislative compliance, rather than by the courts. The Commissioner would therefore determine AMPs with respect to the *Official Languages Act*.

An example of provisions for AMPs can be found in Canada's anti-spam law. Under this legislation, the Canadian Radio-television and Telecommunications Commission may impose AMPs in the case

³⁸ Official Languages Act, SNu-2008, c. 10, ss. 27(2).

³⁹ Charter of the French Language, R.S.Q. c. C-11, s. 205 and s. 205.1.

⁴⁰ Access to Information Act, R.S.C. 1985, c. A-1, ss. 67(2) and paras. 67.1(2)(a) and 67.1(2)(b).

⁴¹ Lobbying Act, R.S.C. 1985, c. 44 (4th Supp.), ss. 14(1) and ss. 14(2).

of a violation. The maximum penalty for a violation is \$1 million for individuals and \$10 million for organizations. 42

Among the agents of Parliament, the Conflict of Interest and Ethics Commissioner has the power to impose AMPs on reporting public office holders who do not comply with certain reporting requirements of the *Conflict of Interest Act*. If the Commissioner believes on reasonable grounds that a violation has been committed, she may issue a notice of violation that sets out the penalty she proposes to impose. The decision to impose a penalty and the amount of the penalty depend on the nature of the violation, the public office holder's history of prior violations over the previous five years and any other relevant matters. The penalty amount, which cannot exceed \$500,43 was established to encourage compliance with the Act rather than to punish (subsection 53(3) of the Act). Anyone who receives an AMP has 30 days to pay the penalty or make written representations to the Commissioner. AMPs are payable to the Receiver General of Canada, and information about them is published on the Web site of the Office of the Conflict of Interest and Ethics Commissioner.

Air Canada is already subject to a number of AMP provisions. For example, the Canadian Transportation Agency may impose AMPs ranging from \$5,000 to \$25,000⁴⁴ on airlines that have contravened the *Canadian Transportation Agency Designated Provisions Regulations*, which regulate the advertising of air service prices.

Similar AMP provisions that apply to airlines, including Air Canada, are administered by the Canada Border Services Agency and the Competition Tribunal.

⁴² An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the *Canadian Radio-television and Telecommunications Commission Act*, the *Competition Act*, the *Personal Information Protection and Electronic Documents Act and* the *Telecommunications Act*, S.C. 2010, c. 23, ss. 20(4).

 $^{^{\}rm 43}$ It should be noted that the Commissioner asked Parliament to increase this amount.

⁴⁴ Under subsection 86.1(1) of the *Canada Transportation Act*, the Canadian Transportation Agency has the power to make regulations respecting the advertising of air service prices. After subsection 86.1(1) was enacted in January 2012, the Agency made amendments to the *Air Transportation Regulations* and the *Designated Provisions Regulations* with respect to the advertising of air service prices. The Agency may impose fines of up to \$5,000 for an individual and \$25,000 for a corporation where either has been found guilty of an offence as a result of contravening these Regulations. As with all Agency enforcement actions, in the case of a contravention, the determination of the required corrective measures and/or level of penalty is based on a number of factors, including the frequency and nature of the offence.

STANDARDIZING THE APPLICATION OF THE ACT TO ALL AIRLINES IN CANADA Air Canada is of the opinion that being the only airline subject to the Act puts it in an unfair situation.

For many years, Air Canada has been saying that its domestic competitors do not have the same bilingualism requirements and that this disparity creates unfair competition. Air Canada claims that the obligation to provide service of equal quality in both official languages should apply equally to all airlines providing service to Canadians.

The Standing Senate Committee on Official Languages urged the Minister of Transport to consider this option:

The Senate Committee is of the opinion that now, more than 40 years [after the adoption of the first *Official Languages Act*], it is time for the federal government to consider extending the obligations established in the [Act] to other airlines. Without question, Air Canada is the air carrier that provides the greatest number of services to Canadian passengers. Its obligations stem from its status as a former Crown corporation and the federal government's desire to preserve those obligations when the airline was privatized in the late 1980s. Other airlines, such as WestJet, are also very active in certain regions of the country. Last fall, WestJet took a series of measures enabling it to provide services in French. The Senate Committee therefore strongly urges the Minister of Transport, Infrastructure and Communities to consider this matter in reference to the study of Bill C-17 so that all Canadian travellers who request them can obtain services in the language of their choice⁴⁵.

Standardizing the language obligations of all Canadian airlines would increase the Commissioner's authority and make the need for an appropriate enforcement scheme even more essential.

CHANGING THE LEGISLATION APPLICABLE TO AIR CANADA TO MAINTAIN ITS LANGUAGE OBLIGATIONS THROUGH ANY RESTRUCTURING

In addition to strengthening enforcement of the *Official Languages Act*, there is also an urgent need for certain legislative amendments to update the *Air Canada Public Participation Act* in light of the changes to Air Canada's corporate structure since it was restructured in 2004 under the *Companies' Creditors Arrangement Act*.

⁴⁵ Parliament of Canada, Standing Senate Committee on Official Languages, <u>Air Canada's Obligations Under the Official Languages Act: Towards Substantive Equality</u>, Ottawa, March 2012.

On November 23, 2006, barely a month after I was appointed Commissioner, I appeared before the House of Commons Standing Committee on Official Languages to discuss the third bill to amend the *Air Canada Public Participation Act* since 2004. On that occasion, I expressed my concerns about both the technical shortcomings of the bill and the lack of language-of-work rights for Jazz employees.

Since then, I have reiterated my concerns to successive ministers of Transport. In my 2008-2009 annual report, I recommended 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." ⁴⁶ However, no legislative amendments have been made since 2004.

In my opinion, the wording of previous bills is no longer appropriate, given the changes that have occurred since 2004. However, a new bill still needs to be introduced to fill the legal void that continues to exist.

To ensure that the language rights of the travelling public and Air Canada employees are upheld, regardless of any future organizational changes to the airline, the government must consider the following three principles when drafting the next bill.

Clarity: The new bill must clearly and specifically identify which entities would be subject to the *Official Languages Act*, including Air Canada's pre-2004 operational divisions and its former subsidiaries (e.g., Jazz). It is essential that legislators use clear language in this bill so that Canadians do not have to go to court yet again to clarify their rights.

Flexibility: The new bill must give the government the power to issue an order-in-council to make any other entity that may exist in the future, following any future restructurings, subject to the *Official Languages Act*. For example, if Air Canada were to change its corporate structure to make its ground services division a separate entity once again, the government should be able to issue an order-in-council to ensure that this new entity is subject to the Act.

Durability: To preserve the language rights of the travelling public, the new bill must include a provision that imposes language obligations on any entity that replaces a given entity: for example, any entity that provides air services or related services in place of Air Canada or Jazz.

It is imperative that the new bill make Jazz directly subject to the *Official Languages Act*. Air Canada's history of complying with the Act has taught us that it is not enough to impose contractual obligations on Air Canada's entities with respect to the travelling public. This kind of

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⁴⁶ Commissioner of Official Languages, <u>Annual Report 2008–2009: Two Official Languages, One Common Space</u> <u>– 40th anniversary of the Official Languages Act</u>, Ottawa, 2009, p. 40.

legal framework makes it impossible for the Commissioner to investigate complaints about Jazz directly or to initiate court proceedings against it in the case of systemic problems.

It is particularly important to be clear and explicit in making Jazz subject to Part V of the Act. This is the only way of preserving the language rights of Air Canada employees who now work for this company.

Ensuring the Primary of Fundamental rights related to international carriage as mentioned in the previous chapter, the *Carriage by Air Act* must be amended to clearly specify that the *Montreal Convention* does not restrict the fundamental rights under the *Official Languages Act* and the *Canadian Human Rights Act*, specifically regarding the power to award damages.

GENERAL CONCLUSION

This special report clearly demonstrates that Air Canada has been having problems complying with the *Official Languages Act* since 1969. The airline is in a class of its own, for both number of complaints and ongoing systemic problems.

Despite the sporadic improvements and sometimes-promising action plans, the time has come to acknowledge that my powers under the Act are inadequate with respect to Air Canada. My predecessors and I have used all of our powers and made hundreds of recommendations to compel Air Canada to meet all of its language obligations towards the travelling public, but none of these efforts have been enough.

It is difficult to understand why Air Canada has not chosen to leverage the benefits of bilingual service in order to stand out from its competitors. Rather than show serious commitment to a distinctive characteristic that would endear it to Canadians, Air Canada prefers to argue that all airlines should be subject to the same language obligations.

In 1988, Parliament strengthened enforcement of the Act by adding Part X on court remedies. This legislative amendment was the result of parliamentary debates on appropriate enforcement of the Act. In fact, in 1978, Pierre De Bané (who was an MP at the time) had introduced a bill to make the Commissioner's decisions enforceable so that federal institutions would implement them immediately or face fine or imprisonment.⁴⁷ I am not necessarily suggesting that the Act should be enforceable for Air Canada to the extent of the measures proposed in that bill, but I think it is time to ask ourselves whether the enforcement scheme adopted in 1988 is appropriate for Air Canada and whether it still meets Canadians' expectations.

Air Canada is a private company that has changed its corporate structure frequently over the past few decades. These successive changes have resulted in the erosion of the language rights of the travelling public and Air Canada employees over the past decade. Therefore, not only does the Act's enforcement scheme need to be reviewed and adapted to take Air Canada's particular situation into account, but the legal voids that continue to exist must also be filled through legislative amendments.

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⁴⁷ Bill C-202, *An Act to amend the Official Languages Act*, introduced on October 31, 1977 and reached second reading (30th Parliament, 3rd Session). The same bill was reintroduced in 1978 as Bill C-294, *An Act to amend the Official Languages Act*, and reached first reading only (30th Parliament, 4th Session). The bill was reintroduced a third time in 1980 as Bill C-398, *An Act to amend the Official Languages Act*, and reached first reading only (32nd Parliament, 1st Session).

As I near the end of my time in office, I think it is important to bring this issue to Parliament's attention and to propose possible solutions. According to Air Canada, its obligations under the Act put it at a disadvantage compared to its competitors. Air Canada believes that the solution would therefore be to make the Act applicable to all airlines. In my experience, a better indicator of success would be a more effective enforcement scheme for the Act that is better adapted to Air Canada's reality.

Since entering into office in 2006, I have appeared before parliamentary committees on numerous occasions, and I have met with various ministers of Transport. Every time I talked about Air Canada's situation, I emphasized the need and the urgency of making legislative amendments to the *Air Canada Public Participation Act* in order to fill certain legal voids that have existed since Air Canada's major restructuring in 2003. Despite four attempts to pass a bill, this issue is still not resolved.

I therefore expect the government to act promptly to introduce the legislative amendments needed to implement the recommendations that will be made by the committee after it reviews this report. I also expect the government to make this a high priority in order to protect the language rights of the travelling public and Air Canada employees.

RECOMMENDATION TO PARLIAMENT

Because this Special Report to Parliament is the last tool I have at my disposal, I recommend that it, along with any issues it raises, be referred for study on an urgent and priority basis to either of the standing committees on official languages.



David J. Shapiro

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LAW BRANCH

P.O. Box 7000, YUL 1276 Station Airport Dorval, Quebec H4Y 132

May 18, 2016

Via e-mail, fax and FEDEX

Mr. Graham Fraser Commissioner of Official Languages 30 Victoria Street, 6th Floor Gatineau, QC K1A 0T8

Subject: Air Canada's Reply under section 67 (2) of the Official Language Act to the

"Special Report"

Y/F: IEMS No.: 3631200

CITS (WebCIMS) No.:89339

Dear Mr. Fraser:

I am writing further to your letter dated April 22, 2016 to our President and CEO informing us that, pursuant to section 67 (1) of the *Official Languages Act* ("*OLA"*), you will be filing a special report to Parliament (the "Special Report") on Air Canada in June 2016 after tabling your 2015 annual report expected this week.

In your letter, you express dissatisfaction with the progress Air Canada has made in response to your various findings as the reason for the need to issue the Special Report. Not only do we categorically disagree with your assessment for reasons we elaborate upon below, we also question the appropriateness of the Special Report as the medium through which you intend to describe "the current problem" and identify "options that should be examined". Section $67(1)^1$ does not support doing so.

NO BASIS FOR SPECIAL REPORT

Given that (1) the matters you describe are not new matters that have arisen suddenly but rather are views that you claim to have held for some time (according to the terms of your April 22 letter) and (2) your determination to address these matters appears to have been made well in advance of your annual report and could have been included in

¹ **67 (1)** The Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 66.



it, there is no statutory basis for recourse to a special report. According to the terms of the legislation, a special report is not an appropriate vehicle in these circumstances, particularly when there has been adequate opportunity to include your observations in an annual report.

Nevertheless, we are responding in a preliminary manner to the concerns you express in your letter to ensure that this reply will be attached to the Special Report as required by section 67 (2) of the OLA^2 .

AIR CANADA'S BILINGUAL PERFORMANCE RESULTS ARE POSITIVE

You assert that Air Canada's efforts in connection with the *OLA* consistently or systematically fall short. We take great exception to your characterisation of Air Canada's performance on official languages. Your assessment disregards not only our sincere commitment and considerable efforts made to improve the delivery of services in both official languages in a very complex industry that has little, if anything, in common with a governmental organisation. More importantly, it wholly ignores the steadily improving results substantiated by a decreasing proportion of complaints over the years and increasing customer satisfaction.

Air Canada is extremely proud of its efforts, investments and results in serving passengers in both official languages.

To put things in context, the following must be recognised:

- Air Canada carried nearly 42 million passengers in 2015, a record.
- This represents an increase of 10 million passengers over a 5-year period, or more than 25%.
- The *absolute* number of complaints has remained *constant* at approximately 50 per year (52 in 2015, 6 of which were not valid) despite the growth.
- Therefore, the *proportion* has *decreased substantially* to a fraction of 1%, i.e. 50 complaints, divided by 42 million passengers or 0.00011905%.
- Moreover, taking into account the average number of points of contact by passengers (minimum of 5 per travel), the ratio of complaints in 2015 was 0.000025%, by any measure extremely low, almost statistically irrelevant, compared to 0.000033% in 2009, an improvement of close to 25%.

It is important to note that this improvement took place despite the complexity of operations and scale associated with the substantial growth. This is clear evidence that refutes your unsubstantiated allegations of inadequate responsiveness and poor performance by Air Canada. Indeed, the numbers highlight the improvement, and the quality and availability of services in both official languages at Air Canada.

² **67 (2)** The Commissioner shall attach to every report made under this section a copy of any reply made by or on behalf of any federal institution concerned.

This extremely low level of complaints is the result of significant efforts and intense commitment by Air Canada and our employees.

BILINGUALISM SUCCESSES

What follows are some accomplishments that, under any objective standard, should be properly recognised.

Reasons Behind our Success

Recruitment: We have succeeded in attracting and hiring a continuously higher proportion of bilingual candidates; they are always prioritized. In the last 15 years, we recruited over 9500 flight attendants and airports agent, close to 60% of whom are bilingual in French and English (not to mention candidates who speak other languages).

Regional Partners: At our insistence, our regional airline partners have also prioritized the recruitment of bilingual employees not only to improve compliance but to promote consistent customer service, which include bilingual service, a cornerstone of our strategy to become a "Global Champion". Since Jazz has joined the Air Canada family in 2000, its proportion of bilingual flight attendants has nearly *tripled* to approximately 76%.

Language Training: Air Canada invests millions of dollars every year in language training for our employees. These funds, earmarked every year for this purpose, are allocated because of our commitment to official language service and customer service generally.

Evidence of our Success

<u>Customer Satisfaction:</u> According to our passengers, satisfaction with our bilingual services is high. A recent poll conducted by Ipsos Reid in April 2016 indicates that 94% of customers are "highly satisfied" or "satisfied" with Air Canada's overall service in official languages. Moreover, a majority of passengers (59%) have also noticed and recognized that the bilingual service delivery has *improved* in the past year.

Independent Comparison of Carriers: In order to determine if our own observations could be independently validated, a report was commissioned in late 2015 from a third party, KPMG, to determine bilingualism levels on our flights. When benchmarked against other players in the Canadian airline industry, it showed that Air Canada provides a significantly and consistently higher level of bilingualism in terms of quality and availability. When compared against similar flights covering the same routes and destinations, Air Canada was rated at "High level of bilingualism" measured through standard and spontaneous messages, both in flight and at the gate, compared to all other carriers, which were rated

"Average level of bilingualism" using the same criteria. Based on the sample used to conduct the benchmarking exercise, Air Canada was by far the most bilingual of all Canadian carriers with, for example, a rating of 92% availability and 100% quality for standard Gate messaging, versus 79% availability and 88% quality for other carriers

BROAD ACCESS TO BILINGUAL SERVICES IN THE AVIATION SECTOR

Air Canada is fully supportive of the objectives of official bilingualism in Canada. In fact, as stated in our submissions filed before the *Canada Transportation Act* (CTA) Review Panel, and as our President and CEO has mentioned to you on several occasions, Air Canada believes that the delivery of bilingual services in air transportation should be expanded and applied across the entire industry on the basis of a single standardized set of rules. This is an issue of access and choice for passengers, not only a matter of principle and fairness for carriers. Canada should be proud of its bilingual heritage and require *all* airlines, which are federally regulated, to adhere to the same bilingualism standards as a cherished Canadian value.

In this respect, we note that the report of this panel tabled on February 25, 2016 by the Honourable Minister of Transport, *Canada Transportation Act* (CTA) Review Panel (the "Emerson Report") contains a recommendation which is consistent with and supports our submissions to "clarify the obligations of airports and airlines to provide services in both official languages, and working with industry and Official Languages Minority to improve consistency". The Emerson Report also recommended a single entry point of complaints regarding a passenger's traveling experience.

We support this single point of entry provided it applies to all carriers and propose that the Canada Transportation Agency be that body. It is the body charged with addressing customer complaints in the aviation sector. Often, when there is a complaint, it arises out of a situation in which there are multiple aspects that are not naturally divisible. The body most familiar with air transport, a complex area in which the Office of the Commissioner of Official Languages ("OCOL") has no specialized expertise, is the Canada Transportation Agency. It is this body that should handle the entire complaint, which may include an aspect relating to official languages; this would streamline the complaint process and make it more broadly accessible. While the OCOL may be well equipped to deal with official languages issues in the context of government agencies where these entities have a public policy mandate and receive government funding, it is less well suited to deal with complaints in the specialised and commercial airline sector where complex, multifaceted matters often arise, intertwining, inter-alia, customer service, compliance with tariffs, security matters, safety concerns, etc. Having the body best able to deal with all these matters in an experienced, fair and appropriate manner would also ensure that government resources are allocated in the most efficient manner.

These concerns are reflected in the attached Schedule "A"containing the essence and main provisions of a new statutory regime that we propose be studied by the Government to meet this national objective. Air Canada is proud to take the lead by

making this innovative proposal to support bilingualism in the airline sector across Canada.

We are awaiting your Special Report, in order to supplement and complete our reply but ask that this letter and the proposed statutory regime annexed as Schedule "A" be attached to your Special Report as required by section 67 (2) of the OLA.

Sincerely,

David J. Shapiro

Senior Vice President and Chief Legal Officer

Encl.

SCHEDULE A

CORE PROVISIONS OF DRAFT LEGISLATION PROPOSED BY AIR CANADA FOR THE IMPLEMENTATION OF A NEW BILINGUALISM REGIME APPLICABLE TO ALL CANADIAN AIR CARRIERS

Proposed legislation to amend the *Canada Transportation Act*, to require that all Canadian air carriers provide services in both official languages, to provide for certain other measures and to make consequential amendments to other Acts

"An Act to amend the Canada Transportation Act, to promote bilingualism in air transportation in Canada, to provide for certain other measures and to make consequential amendments to other Acts

WHEREAS Canadians share a deep regard for linguistic rights and recognize the inherent value of Canada's two official languages: French and English;

AND WHEREAS the Government of Canada is committed to enhancing the bilingual character and fostering equality of English and French across the Canadian transportation network;

AND WHEREAS the recommendations of *Canada Transportation Act* (CTA) Review Report tabled on February 25, 2016 by the Honourable Minister of Transport encourage a single point where passengers have their travel-related complaints addressed;

AND WHEREAS the Government of Canada is committed to cooperating with and encouraging Canadian air carriers to foster the recognition and use of English and French;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Interpretation

1. The following definitions apply in this section:

"Canadian Air Carrier" means any Canadian that provides air services under a license for domestic services, a license for scheduled international services or a license for non-scheduled international services granted pursuant to this Act. (Transporteur aérien Canadien)

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Communications and Services to the Traveling Public

Canada Transportation Act

2. The *Canada Transportation Act* is amended to add the following after subsection 85.1:

Official Languages

- 85.2 (1) Every Canadian Air Carrier that provides services or makes them available to the travelling public has the duty to ensure that any member of the travelling public can communicate with and obtain those services in either official language from any office or facility of the Canadian Air Carrier in Canada where there is significant demand for those services in such language.
- (2) Every Canadian Air Carrier has the duty to ensure that services to the travelling public as may be prescribed by regulation of the [Governor in Council/Agency] that are provided or made available by another person or organization pursuant to a contract with the Canadian Air Carrier for the provision of those services at an office or facility referred to in subsection (1) are provided or made available, in both official languages, in the manner prescribed by regulation of the [Governor in Council/Agency].

Regulations

- (3) The [Agency/Governor in Council] may make regulations
 - (a) prescribing the circumstances in which there is significant demand for the purpose of subsection (1);
 - (b) prescribing circumstances not otherwise provided for under this Act in which Canadian Air Carriers have the duty to ensure that any member of the public can communicate with and obtain available services from offices of the Canadian Air Carrier in either official language
 - (c) prescribing services, and the manner in which those services are to be provided or made available, for the purpose of subsection (2); and
 - (d) defining the expression "English or French linguistic minority population" for the purpose of paragraph (4)(a).
- (4) In prescribing circumstances under paragraph (3), the [Governor in Council/Agency] may have regard to
 - (a) the number of persons composing the English or French linguistic minority population of the area served by an office or facility of a Canadian Air Carrier, the particular characteristics of that population and the proportion of that population to the total population of that area;
 - (b) the volume of communications or services between an office or facility of a Canadian Air Carrier and members of the public using each official language; and
 - (c) any other factors that the [Governor in Council/Agency] considers appropriate.

(5) In prescribing any matter under paragraph (3), the [Governor in Council/Agency] shall not distinguish or discriminate among Canadian Air Carriers in the application of any regulation.

Application

(6) (a) The Agency may, on application, inquire to determine whether a Canadian Air Carrier failed to ensure that a member of the travelling public could communicate with the Canadian Air Carrier and/or obtain from it air services in Canada in either official language.

Remedies

(b) On determining that there is failure by the Canadian Air Carrier to ensure the complainant could communicate with the Canadian Air Carrier and/or obtain from it air services in either official language in Canada, the Agency may, subject to the *Carriage by Air Act* when applicable, require the taking of appropriate corrective measures in respect of the complainant as a result of the Canadian Air Carrier's failure."

Language of Work

Canada Labour Code

The Canada Labour Code is amended to is amended to add the following after subsection 247.97:

"DIVISION XV.3: LANGUAGE OF WORK FOR CANADIAN AIR CARRIERS

Duties of Canadian Air Carrier

247. 98 (1) Every Canadian Air Carrier has the duty to ensure that in any part or region of Canada, that is prescribed, work environments of the Canadian Air Carrier are conducive to the effective use of both official languages and accommodate the use of either official language by its officers and employees; and

Regions of Canada prescribed

(2) The regions of Canada set out in Annex B of the part of the Treasury Board and Public Service Commission Circular No. 1977-46 of September 30, 1977 that is entitled "Official Languages in the Public Service of Canada: A Statement of Policies" are prescribed for the purpose of paragraph (1)(a).

Minimum duties in relation to prescribed regions

- **247.99** (1) Every Canadian Air Carrier has the duty in any part or region of Canada, that is prescribed for the purpose of paragraph 247.98(1), to
 - (a) make available in both official languages to employees of the Canadian Air Carrier
 - (i) services that are provided to employees, including services that are provided to them as individuals and services that are centrally provided by the Canadian Air Carrier to support them in the performance of their duties, and
 - (ii) regularly and widely used work instruments produced by or on behalf of that or any Canadian Air Carrier, provided such instrument is readily available in the normal course of business in both official languages; and
 - **(b)** ensure that where it is appropriate or necessary in order to create a work environment that is conducive to the effective use of both official languages, documents affecting an employee's employment status, remuneration or benefits are provided in the preferred official language of the employee.

Regulations

- **247.100** The Governor in Council may make regulations for the purpose of this Division:
- (a) adding to or deleting from the regions of Canada prescribed by subsection 247.98(2), having regard to

- (i) the number and proportion of English-speaking and French-speaking employees who constitute the work force of the Canadian Air Carrier based in the parts, regions or places prescribed, and
- (ii) any other factors that the Governor in Council considers appropriate."

Coordinating Amendments

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[AMENDMENTS NECESSARY TO GIVE FULL EFFECT TO THIS PROPOSED LEGISLATION TO BE ADDRESSED AND PROPOSED]

Coming Into Force

3. This Act comes into force on a day to be fixed by order of the Governor in Council made on the recommendation of the Minister.