

Bill C-6
An Act to Amend
the Aeronautics Act

Submission to the
Standing Committee on
Transport, Infrastructure
and Communities

February 26, 2007



CANADIAN AIRPORTS COUNCIL
CONSEIL DES AÉROPORTS DU CANADA

**Submission of the Canadian Airports Council to the
Standing Committee on Transportation,
Communities and Infrastructure on Bill C-6 –
An Act to Amend the Aeronautics Act**

The members of the CAC view Bill C-6 as a largely positive and overdue series of amendments to the Aeronautics Act. There are a wide variety of positive changes to the Act, including the protection of reporters into a Safety Management System, the recognition for Fractional Ownership, the Assurance of Compliance amendments and the Designated Organization amendments, to name only a few. CAC members do have some concerns over certain elements of the proposed amendments.

The comments and concerns outlined in this submission are listed in the order in which they appear in the Act.

Purpose

3.1 CAC members are pleased that the purpose of the Act is to provide for “safe, efficient and environmentally responsible aeronautical activities”. It is key to the members of this association that the Minister recognizes the importance of efficiency as well as safety and the environment.

CAC members are concerned that the purpose to “promote aeronautics by such means as the Minister considers appropriate;” has disappeared from the existing provisions of the Aeronautics Act. Instead, the Bill sets out that the purpose of the Act is “promoting and providing for the safety and security of the public and persons who perform aeronautical activities....” While the CAC supports this amendment, the Bill should retain the “promote aeronautics” element as a separate purpose to highlight the importance of a strong aviation sector to Canada’s transportation infrastructure.

CAC members believe that the promotion of aeronautics is consistent with the Minister’s safety oversight role. Aviation is the safest and most efficient mode of transportation, and the Minister should always consider the potential that some forms of regulatory activity may make air travel less attractive and depress demand for aviation services.

Preservation of Information

4.9(s) This proposed amendment reflects the authority of the Minister to keep and preserve “information” relating to aerodromes, in addition to the previous requirement to keep records and documents. Furthermore, the proposed amendment goes on to reflect the authority of the Minister to compel the provision of these items to the Minister.

The members of the CAC see no reason why the Minister's authority to compel the production of documents should extend to documents of any description (including commercially-sensitive documents unrelated to the objects of the Act, for example) and the CAC believes his authority should be limited to documents required to be kept under this Act, or documents, records or information in the possession of any person which have a direct impact on the condition of the aeronautical environment, or the safety and security of any aeronautical product or service.

Designated Organizations

5.31 The members of the CAC support the proposed amendments which relate to Designated Organizations. The CAC believes that the designation provisions provide an opportunity for the Minister to delegate authority to other organizations, under appropriate circumstances. This is seen as a very natural evolution in a successful Safety Management Systems environment that could benefit the regulator, the travelling public, and certificate holders.

If certificate holders, through the application of Safety Management Systems principles, identify and manage incipient safety hazards before they become accidents, CAC members do not believe that there is any reason why a Designated Organization should not be able to assume more delegated authority for managing the regulatory environment. This would be a positive safety development for the following reasons:

- Designated Organizations would only be identified for those segments of the aviation community that have demonstrated that they are mature enough to manage the Designated Organization, and whose members are prepared to submit themselves to the designated authority – the starting point for any program would have to be an outstanding safety record
- Certificate holders and their employees operate at the coal face, and are the most aware of the risks in their operations
- Regulations can *obstruct* safety – regulations by-their-nature are prescriptive and can constrain certificate holders from using more flexible methods that provide an equivalent or higher level of safety, unanticipated by the regulations
- A Designated Organization would be more nimble to adopt changes that would enhance safety *and* efficiency
- Transport Canada inspectorate staff, with the passage of time, are becoming more removed from the day-to-day realities of airport operations - the CARAC consultation process helps mitigate these concerns, but it is time consuming and can be cumbersome
- The Minister can still audit and inspect the Designated Organization as well as the certificate holders who are subject to its authority.

Information Confidential

5.393 The members of the CAC are concerned that the proposed revisions to the Act do not provide adequate protection for reports flowing from Voluntary and Non-Punitive reporting programs. These programs were established to facilitate and encourage voluntary reports in order to identify incipient risks, even under circumstances where they revealed an unintentional violation of the regulations. The CAC is concerned that access by the courts, and access for "public interest" reasons (see section 7.1(1)(c)) will discourage individuals and certificate holders from reporting into these programs.

These voluntary reports are at the very heart of a Safety Management System, and they hold a veritable gold mine of incipient hazards that historically have gone undetected using *any other mechanism*. The specific protection set out in section 5.396 extends only to proceedings under this Act, and would not extend to protect the content of the reports, the reporters, or the certificate holder from any civil proceedings or proceedings under any other Act.

The concern is that these reports will "dry-up" the first time that these reports are subpoenaed and the reporter is summoned to testify in judicial proceedings. The certificate holder's protection against this eventuality will be a robust risk analysis process that will provide a due diligence defence.

The CAC does support the exceptions set out in 5.396(2)(a)(i) and (ii) and 5.396(2)(b), (c), and (d) however, the CAC does not understand why section 5.396(2)(a)(iii) appears to remove protection from a reporter when the report contains evidence of an unintentional regulatory violation. The CAC was led to believe that that this section was established for just that purpose, subject to the other exceptions discussed above.

If the Minister's intent is to allow for another exception to the protection provided under 5.396(1) of the Act, then it is respectfully suggested that subsection 5.396(2)(a)(iii) be amended to reflect "a contravention of any provision that is prescribed by regulation that specifically provides an exception to the protection set out in subsection (1)."

Aerodrome Zoning

The members of the CAC support most of the proposed revisions to this part of the Act, however, there are two concerns with the amendments as proposed:

1. The members of the CAC would like to have the option of accepting a delegated authority to enter onto the property of the landowner or lessor, to 'top' or remove the trees. This would be done at the Minister's expense where there is registered zoning in place. Where no zoning exists, the airport operator could balance the cost of removing the trees and compensating the owner/lessor against the operational limitations that

would be imposed on the airport if the trees were left in place (a displaced threshold or an unusable Instrument Landing System (ILS), for example).

In any case, under the terms of C-6, it is still clearly the Minister's *responsibility* to remove the trees which create a hazard however, there are many sites in Canada where the Department does not have the time, inclination, or resources to take this action and the airport operator must accept the attendant operational limitations placed on them by the obstacles. In short, the airport operator pays an operational price for leaving the trees standing without any authority to remove them themselves, or to compel the landowner/lessor to remove them, or to compel the Minister to remove them.

2. The members of the CAC would like to have a more robust and timely mechanism to intervene when there are other threats to aviation safety in the vicinity of the airport.

For example, the Minister has recently imposed more responsibility for responding to off-site hazards through new Bird & Wildlife Control Regulations and proposed new Emergency Response Regulations. These new responsibilities came without any new authority to compel or influence landowners or lessors to modify their activity or land use.

The Department rarely takes any action under these circumstances to compel the land owner or lessor to modify the incompatible land use, and there is some exposure for the aerodrome operator in light of recent amendments to these regulations. In short, the Minister has imposed on the aerodrome community more responsibility for monitoring and responding to off-airport threats to safety, without any new mechanism, assistance or authority to compel a change in behaviour by the user of the neighbouring land.

Punishment – Corporations & Individuals

7.3 (4) and (5) The members of the CAC note that the proposed amendments to the Act raise the maximum summary conviction fine for corporations from \$25,000.00 to \$1,000,000.00.

The CAC is not aware of any evidence that the existing fines are inadequate to deter prospective corporate offenders and believes that it is incumbent on the Minister to demonstrate that the old fines are inadequate and that the new fines, forty-times higher, are a necessary deterrent. These comments also would apply to the maximum fines for individuals, which have been raised from \$5,000.00 to \$100,000.00.

In the absence of any evidence that significantly higher fines are necessary, a more modest increase in the maximum could be justified on the basis of inflation.

It is the CAC's respectful submission that the increases being proposed are unreasonable.

Continuing Violation or Offence

7.3(1) To apply the terms of this proposed amendment to regulatory violations which are not wilful acts of the individual or corporation could potentially expose them to multiple fines for an inadvertent act or omission that was committed only once. This would essentially defeat the limitation on the maximum fine, for an act or omission that the individual did not address their mind to each day.

Even for wilful acts, the thought of applying a new offence for each day that the offence continues is unfair. Even in the criminal law an individual can only be charged for kidnapping once, rather than a separate offence for each day that the offence continues.

This amendment runs contrary to natural justice and it is the position of this association that it could lend itself to an abuse of authority, whereby the Minister could potentially compel the certificate holder to agree to an otherwise unreasonable fine at the upper limit of the range set out in the statute over a threat to proceed using separate daily offences. This section, it is the respectful position of the CAC, should be deleted altogether.

Regulations

8. Again, the maximum fine in this proposed amendment has been increased from \$5,000.00 to \$50,000.00 for an individual and from \$25,000.00 to \$250,000.00 for a corporation without any justification.

Limitation Period - Exception

26 (2) The limitation period set out in this section is unreasonable, and the day that the Minister became aware of the subject-matter of the measures or proceedings should be irrelevant to the limitation period. The 12-month limitation period should run from the time that subject-matter of the measures or proceedings arose.

Particularly with respect to summary conviction matters, it is unfair that a person could remain vulnerable to proceedings for a relatively minor offence, years after the offence took place. In any case the individual would never have any idea which day the Minister became aware of the subject matter, since that information is only available to the Minister.