

**BRIEF TO THE STANDING SENATE COMMITTEE ON OFFICIAL LANGUAGES**

*Bill C-13, An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts*

May 4, 2023

## **1 – ABOUT AIR CANADA**

Air Canada is the country's leading airline. We serve 50 airports in Canada, 47 in the United States and more than 70 others around the world. Prior to the pandemic, we served more than 50 million passengers each year, equivalent to more than 150,000 people each day during peak periods. The industry's recovery has now enabled us to be able to accommodate an increasing number of passengers—close to 140,000 each day during peak periods. On average, each passenger has five to six points of contact with Air Canada staff.

We interact with our passengers as they move through a series of services. Our interactions begin when customers start planning a trip and purchase tickets, and they continue during check-in, airport reception service, safe boarding of the aircraft, in-flight service and baggage claim after landing.

Official languages are part of the entire process. Using them and promoting them are integrated into our corporate values and priorities. In particular, employees are assigned to assist our customers in the official language of their choice on each designated bilingual flight. Regardless of whether a flight is designated bilingual, each flight is part of a schedule of flights and crews that make up our network, a human and physical infrastructure deployed on a daily basis that we are proud to make available to Canadian and international travellers.

Air Canada complies with its language obligations despite unique operational complexities. No other organization, department or business subject to the *Official Languages Act* ("OLA") faces challenges as different and unpredictable as we do every day. For example, we strive to provide consistent bilingual service while dealing each day with the vagaries of weather, mechanical breakdowns, book offs, airport operations issues, security measures and socio-political events that may affect our operations. We pride ourselves on complying with the requirements of the OLA amidst complex and changing circumstances.

## **2 – THE OFFICIAL LANGUAGES: A SOURCE OF PRIDE FOR AIR CANADA**

Air Canada is proud to offer high quality service in both official languages. We are a leader among major private Canadian companies in employing and promoting both official languages. We are constantly striving to improve the services we offer our customers in the language of their choice.

Air Canada is the only airline to which the OLA applies. Unlike government institutions, we receive no government funding to meet our obligations. Each year, we invest more human and financial resources to improve our employees' training in order to offer our customers the best possible experience.

Over the years, Air Canada has implemented a series of initiatives to improve the services we provide to our customers in both official languages. These are made public in our linguistic action plans, which are updated every three years. Among other initiatives, we have:

- Established an official languages management committee responsible for implementing the company's Linguistic Action Plan, as well as a network of supporters responsible for promoting the plan throughout the company.
- Made recruiting bilingual employees across the country a priority. Today, nearly 50% of our employees who serve travellers meet our strict bilingual qualification requirements. This makes us one of the largest airlines in the world able to offer customer service in both English and French.
- Adopted new languages policies for employees.
- Taken steps to raise awareness among our employees and offer them training.
- Implemented special measures to welcome new employees.
- Established a language training plan to support employees wishing to improve their language skills.

The Commissioner of Official Languages regularly reviews Air Canada's activities and makes recommendations to improve our service delivery. He also receives complaints from passengers. Without minimizing the importance of recording complaints and addressing them, we should note that they are rare, considering the scale of our operations. In 2019, for instance, we served over 51 million passengers, yet only about 90 complaints were made against Air Canada.

We are aware that there is always room for improvement. That is why our Linguistic Action Plan 2020-2023 aims to ensure a strong governance structure, improved awareness at all levels of the organization and accountability to drive performance while increasing the number of employees committed to implementing the plan.

In short, Air Canada supports and promotes compliance with language rights at all times within the company and in its service offering. That is why we support the desire of the Government of Canada to extend the scope of the OLA to all private sector companies under federal jurisdiction.

### **3 - IMPROVING BILL C-13**

#### **3.1 A consistent and coherent policy**

Under the current law, only passengers travelling with Air Canada have language rights. By proposing the *Use of French in Federally Regulated Private Businesses Act* ("UFA"), Bill C-13 could change this situation by establishing a single industry-wide policy to ensure that travellers have the same language rights when interacting with all Canadian airlines.

Bill C-13 creates new obligations in Quebec and in "regions with a strong francophone presence" for private companies under federal jurisdiction, such as banks, air and marine transportation services and telecommunications companies. In particular, it stresses the need to protect and promote the French language in these regions. However, to fully promote bilingualism in our industry and to ensure consistency, the same language requirements should apply to the entire airline industry.

The new obligations under the UFA are more limited than those provided in the OLA, which are much broader in scope. The concept of "significant demand" determines whether the activities of Air Canada or an airport authority must meet the requirements of the OLA. The use of two different concepts for the same industry, "significant demand" on the one hand and "strong francophone presence" on the other, will inevitably cause confusion for travellers who use different airlines and who travel outside Quebec.

Simply put, if Bill C-13 is passed as it now stands, the right of travellers to obtain service in French would continue to be determined by the airline they use, not by their route, since the Bill does not provide a consistent and coherent framework applicable to all airlines.

These provisions do not support the objective of increasing the use of the French language in various areas of civil society, not only in Quebec but also elsewhere in the country. Yet, recent data from Statistics Canada clearly demonstrates the need for action that is more far reaching than what is provided for in Bill C-13.

Air Canada is not alone in having noted this deficiency. The Commissioner of Official Languages also notes in his brief to the Standing Committee on Official Languages that Bill C-13 will create a two-tier system. He writes:

The bill states that businesses subject to the UFA are not businesses that are already subject to the OLA, such as Air Canada or Canadian National. As a result, FRPBs will have obligations that may differ depending on which act they are subject to, including some companies in the same industry, such as Air Canada and WestJet. This means that the public they serve and the employees who work for them will have different rights, and different remedies, depending on which act applies. Canadians will find themselves in a fragmented and sometimes inconsistent language environment. Moreover, they will not have certain key language protections under the UFA that they have under the OLA.

Greater harmonization is therefore required.<sup>1</sup>

We agree with the Commissioner's position. If Bill C-13 is passed as it now stands, a passenger travelling between two cities with WestJet or Porter may not be entitled to the same service in the official language of their choice as if they were travelling with Air Canada.

In other words, although Bill C-13 would subject other airlines to language obligations, its legal framework would remain flexible. With multiple airlines offering the same routes, travellers have the right to expect that the same rules apply for the same routes.

In addition, Bill C-13 does not clearly define the Commissioner's powers with respect to other airlines, including the power to issue orders and impose administrative monetary penalties. This deficiency should also be corrected. Limiting the scope of powers granted under an act to one part of an industry, let alone a company, but not to others subject to the same enabling legislation is unprecedented.

A special policy for Air Canada may have seemed warranted when the *Air Canada Public Participation Act* was passed in 1988. However, the situation has changed. At the time, Air Canada held more than 80% of the Canadian airline market. It was often the only airline on many routes between different parts of the country. Today, Air Canada's domestic capacity share has declined to less than 50%. New airlines have established themselves across the country. WestJet, for example, serves all provinces in Canada and has a domestic capacity share of close to 35%.

## **Recommendation**

As such, we propose that the Bill be amended to specify that:

- a) The concept of "significant demand" set out in the *Official Languages Regulations* must be applied with respect to air travel to identify the routes

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<sup>1</sup> Raymond Th  berge, Commissioner of Official Languages, *Seizing a Historic Opportunity: For a Complete Modernization of the OLA*, Brief to the Standing Committee on Official Languages, October 2022, p. 24

and offices at airports that are bound by the obligation to provide bilingual services. To this end, we recommend adding the following paragraph (d) to section 33 of the UFA:

<p><b>Factors defining a “region with a strong francophone presence”</b></p> <p>(2.1) In making a regulation that defines “region with a strong francophone presence” under paragraph (1)(b), the Governor in Council may take into account any factors that the Governor in Council considers appropriate, including:</p> <p>(a) the number of francophones in a region;</p> <p>(b) the number of francophones in a region as a proportion of the region’s total population; and</p> <p>(c) the vitality and specificity of French linguistic minority communities; <del>and</del></p> <p><b><u>(d) with regard to services to the travelling public either on a route or in an airport by a federally regulated private business, the application of the <i>Official Languages (Communications with and Services to the Public) Regulations, SOR/92-48 which already determines where there is “significant demand” for French on routes served and airports managed by entities subject to the <i>Official Languages Act.</i></i></u></b></p>	<p><b>Critères pour définir une « région à forte présence francophone »</b></p> <p>(2.1) Lorsqu’il prend un règlement en vertu de l’alinéa (1)b) afin de définir « région à forte présence francophone », le gouverneur en conseil peut tenir compte de tout critère qu’il estime approprié, notamment :</p> <p>a) le nombre de francophones dans une région;</p> <p>b) le nombre de francophones dans une région par rapport à la population totale de la région;</p> <p>c) l’épanouissement et la spécificité des minorités francophones</p> <p><b><u>d) à l’égard des services offerts au public voyageur sur un trajet ou dans un aéroport par des entreprises privées de compétence fédérale, à l’application du Règlement sur les langues officielles, communications avec le public et prestations des services DORS/92-48 lequel détermine déjà « la demande importante » en français des trajets et des aéroports administrés ou servis par des entités tenues à la Loi sur les langues officielles.</u></b></p>
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- b) All of the new powers granted to the Office of the Commissioner extend equally to all airlines, and even to all entities subject to the Act, whether public or private. We therefore propose to amend section 37 of Bill C-13 as follows:

<p><b>Application</b></p> <p><b>65.2</b> Sections 65.3 to 65.95 apply to <u>all</u> federal institutions subject to this Act a Crown corporation—or corporation that is subject to this Act under another Act of Parliament—that</p> <p><del>(a)</del> is designated by regulation;</p> <p><del>(b)</del> has duties under Part IV.</p> <p><del>(c)</del> operates in the transportation sector; and</p> <p><del>(d)</del> engages in communications with and provides or makes available services to the travelling public</p>	<p><b>Application</b></p> <p><b>65.2</b> Les articles 65.3 à 65.95 <u>s'appliquent à toutes institutions fédérales assujetties à la Loi qui</u> aux sociétés d'État—ainsi qu'aux personnes morales assujetties à la présente loi en application d'une autre loi fédérale qui remplissent les conditions suivantes:</p> <p><del>a)</del> elles sont désignées par règlement;</p> <p><del>b)</del> elles ont des obligations au titre de la partie IV;</p> <p><del>c)</del> elles exercent leurs activités dans le domaine des transports;</p> <p><del>d)</del> elles offrent des services aux voyageurs et communiquent avec eux</p>
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### 3.2 – No-fault liability

According to a general principle of law, liability stems from a fault, except in a few well-defined cases. If Bill C-13 is passed as it now stands, entities subject to the Commissioner's sanctioning power could be penalized even if they make reasonable efforts to comply with their obligations. The Bill removes any opportunity for these entities to demonstrate that they have been diligent in implementing their obligations under the OLA—in other words, that they have taken all reasonable steps to do so. In fact, subsection 65.95(1) of the Bill states the following:

A designated body names in a notice of violation does not have a defence by reason that it exercised due diligence to prevent the violation, or that it reasonably and honestly believed in the existence of facts that, if true, would exonerate it.

Such grounds of defence are rarely excluded, and they are so only in particular cases, known as absolute liability cases, such as activities that are dangerous or have lasting consequences for the health and safety of people, or regulatory

offences where the mere commission of prohibited acts is sufficient to find that there has been wrongful conduct, regardless of intent (e.g., road safety violations).

OLA obligations are institutional in nature, and, in the case of airlines, they are met in a fluid and changing environment. They often depend on human interaction in an evolving environment. There are many cases involving the official languages in which due diligence should be recognized, for example:

- The crew assignment system ensures the presence of bilingual personnel on a flight with significant demand. During the flight, a passenger becomes ill and several cabin crew members must provide emergency care. Meanwhile, a passenger requests to be served in French, but the French-speaking crew members are assisting the sick passenger.
- Employees are assigned to a small airport requiring the presence of only two attendants. The French-speaking employee is momentarily indisposed and cannot assist passengers wishing to be served in French. They are therefore directed to the telephone service.

We are of the opinion that in these circumstances, or similar ones, it would be appropriate to use the due diligence or honest belief defence in response to a notice of violation. This would not automatically result in an override of the obligations. On the contrary, a judge would have the opportunity to assess the merits of the defence based on the evidence presented.

### Recommendation

We therefore recommend that the Bill be amended to state that the entities subject to the new obligations have the right to use the due diligence and reasonable belief defence (rather than being expressly prohibited from doing so under subsection 65.95(1) of the Bill).

<b>Available defences</b>	<b>Moyens de défense</b>
<p><b>65.95 (1)</b> A designated body named in a notice of violation <del>does not have</del> <b>has</b> a defence by reason that it</p> <ul style="list-style-type: none"><li>• <b>(a)</b> exercised due diligence to prevent the violation; or</li><li>• <b>(b)</b> reasonably and honestly believed in the existence of facts that, if true, would exonerate it.</li></ul>	<p><b>65.95 (1)</b> Le prétendu auteur de la violation ne peut invoquer en défense le fait qu'il a pris les mesures raisonnables pour empêcher la violation ou qu'il croyait raisonnablement et en toute honnêteté à l'existence de faits qui, avérés, l'exonéreraient</p>



## 4 – CONCLUSION

Air Canada is the country's largest airline and we take our language obligations very seriously. Our expertise and commitment to bilingualism, enables us to serve thousands of customers each day in the official language of their choice.

We support the government's commitment to protecting the language rights of travellers. However, in order for this protection to be adequate, it must be applied to all airlines consistently and coherently.

As such, we recommend that the Bill be amended to state the following:

- a) The concept of "significant demand" set out in the *Official Languages Regulations* must be applied with respect to air travel to identify the routes and offices at airports that are bound by the obligation to provide bilingual services;
- b) All new powers granted to the Commissioner extend consistently to all airlines; and
- c) The entities subject to the new obligations have the right to use the due diligence and reasonable belief defence (they are expressly prohibited from doing so under subsection 65.95(1) of the Bill).

These changes amendments would harmonize language requirements across the airline industry, as well as provide passengers with more options and ensure greater consistency in their rights.

We would like to take this opportunity to reiterate our commitment to promoting Canada's official languages. We thank the committee members for considering our position and remain at their disposal should they require clarification.