



Brief for:
Senate Standing Committee on Transport and Communications

Regarding:
Bill C-43 Part 4 Division 2 Sections 143, 144 –
Amendments to the Aeronautics Act (the Act)

Submitted by:
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On behalf of:
The Canadian Owners and Pilots Association (COPA)

Summary:

We are concerned about the manner in which the Act amendment was developed, without consultation, how far the power of the Minister would extend and the one-sided nature of imposing consultation requirements and prohibitions on aerodromes when no such Aeronautics Act consultation requirements or prohibitions exist on land uses around most of the aerodromes in Canada. We are also concerned that this matter has not been assigned to the Standing Committee on Transport, Infrastructure and Communities. We therefore request that Bill C-43, Part 4, Division 2 be removed from the Bill until such time as consultation with the aviation industry occurs.

Note:

I use the terms “aerodrome” and “airport” in this brief. “Aerodrome” has a broad definition in the Act, and applies to over 5000 facilities in Canada, from a farmer who uses his field for crop spraying operations, to every worksite or company works yard that utilizes a helicopter, to every cottage owner who keeps a seaplane on his lakeside dock or every log buyer who lands by a log boom, to large facilities like Ottawa’s Macdonald Cartier. “Airport” is referred to in regulations as “certified aerodrome”; a subset of aerodromes for which TC has granted a certificate in accordance with CAR 302. According to TC’s “Transportation in Canada 2011” report¹, the last year that statistics were publicly available online, there are 570 airports.

Background:

The current Transport Minister set a goal not long after being assigned the portfolio to create a requirement in the regulations for any aerodrome proponent to consult with certain individuals and government agencies prior to creating an aerodrome or constructing anything on that aerodrome. Under the regulatory change process called CARAC, TC conducted an internal assessment in the form of a Preliminary Issue and Consultation Assessment² (PICA) and determined that in-depth consultation with stakeholders, in the form of a focus group, was not necessary. Given the far-reaching potential of this initiative, the industry responded to this decision with an unprecedented amount of feedback calling for a focus group. A focus group meeting, including COPA, finally occurred in June 2014. At that time, it was our understanding that:

- a) TC wanted to require consultation in order to have official and traceable involvement of the public in the plan to build an aerodrome;
- b) the requirement to consult would be limited to new aerodromes and construction on those aerodromes; and
- c) there would be an amendment to the Act to revise the definition of an Aerodrome so that, for example, some infrequent uses of land or water would no longer be considered an aerodrome.

The focus group's work stemmed from the PICA. While there was mention made of operations in the PICA, there was no mention of new construction on existing aerodromes or operational changes at existing aerodromes. In fact, the PICA listed the stakeholders as: "Individuals who propose to construct and operate an aerodrome in Canada, those who may intend to use an aerodrome in the future, as well as the general public." Furthermore, part of the PICA process is to assess the size of the affected population. This statement was made: "The population size cannot be quantified as the proposed requirement to consult would apply to new aerodromes." There was no mention of existing aerodromes.

A draft report from the focus group meeting resulted in several suggestions for changing the report. The draft report reflects a strong consensus by the industry participants that the applicability of the requirement to consult should be to new aerodromes only. The industry has been waiting for the finalized report and anticipating draft regulatory amendments in the Fall of 2014, after which another focus group would be convened. None of these events have occurred. COPA (and we suspect the other industry participants) understood from the focus group discussion that the Act amendment would occur sometime after the draft regulations were released and that an Act amendment would be consulted.

The Manner in which the Act amendment was developed:

It came as a complete surprise that an amendment to the Act appeared as part of Bill C-43. None of the participants in the focus group who have been contacted by COPA had knowledge of this development, including any discussion of its content.

The Act amendment has nothing to do with what was anticipated and it extends well beyond new aerodromes and the proposed use (operations) of new aerodromes. Had the focus group known that the initiative extended as far as the Act amendment proposes, there would have been considerably different discussions about the implications of the expanded applicability. Given that there was no discussion with industry about the Act amendment and the scope of applicability is much broader than was discussed, the Act amendment should be pulled from Bill C-43 to permit a thorough discussion with the industry.

The Intent of the Minister:

It would appear that 4.31 in the Act amendment is not strictly required. Under 4.3(2) of the Act the Minister could be granted specific authority to make orders "prohibiting the development or expansion of a given aerodrome or any change to the operation of a given aerodrome" by regulation. However, that regulation and any order made pursuant to it would have to be published in accordance with the Statutory Instruments Act³ (SIA). The real purpose of passing this authority as part of an omnibus budget bill appears to be 4.31(2), which exempts an order from the need to comply with the SIA.

Since the requirements of the SIA are statutory, an exemption from compliance cannot be made by regulation unless that power is granted in the SIA. In this case, no such provision is made in the SIA. Thus,

the real purpose of adding s. 4.31 to the Aeronautics Act appears to be to avoid the need to have the order comply with the SIA. Thus, the Minister can avoid due process and the thorough discussion with all parties if the Minister so chooses, for whatever reason. COPA is very concerned that this level of power, in the absence of policy, could lead to significant damage to the national air transportation system.

To illustrate this concern, I refer to the testimony⁴ given by TC's Shari Currie to the Standing Committee on Finance on 5 October 2014. MP Murray Rankin asked "...if there is any structuring of that wide open discretion as regards public interest? Is there any documentation or guidance that's provided on how that discretion would be exercised?" Shari Currie referred to the "four corners of the Aeronautics Act or the principles embedded in the Aeronautics Act." MP Rankin asked for further clarification by asking if discretion "must relate to aeronautic policy" to which Shari Currie responded "yes".

During preparation of this brief, our review of the Act did not reveal any clear indication of the scope of public interest and a TC official confirmed that this would be developed as part of the requirement to consult initiative. Since the scope of the Minister's powers regarding public interest remains unspecified, it is premature to grant additional powers.

Aeronautic Policy:

There is a void of "aeronautic policy", especially as it relates to most of the aerodromes in Canada.

There is in fact a National Airports Policy⁵ that has been in place since 1994. It was developed to justify the government's decision to get out of the ownership of all except 26 major airports and operation of any airport. There are bold statements in the Policy regarding communities being able to determine what is best for their air transportation needs. COPA opposed the Policy because it left all regional and smaller aerodromes at the whim of local interests. We have regularly reminded Transport Ministers that the Policy should be reviewed to see if it is maintaining a sufficient number of aerodromes to support all facets of aviation as a form of transport, training and recreation. TC has refused to review that policy. Consequently, there remains little guidance, if any, for the Minister to determine public interest, at least as far as aerodrome proponents and users are concerned.

Given that there is little or no clear policy guidance for the Minister to support a national aerodrome infrastructure beyond the 26 major airports, the exercise of additional powers to restrict or prohibit aerodromes should only occur within the current SIA so that the aviation industry can fully participate in any determination.

Existing Powers:

There are proposed additions to section 4.9 of the Act that come after 4.9(k). On the face of it, it would appear that there already is authority to make regulations prohibiting the development or expansion of aerodromes or any change to the operations of aerodromes under section 4.9(e), so (k.1) does not appear to create a power that does not presently exist. The same is true of (k.2). Any regulation concerning "activities at aerodromes and the location, inspection, certification, registration, licensing and operation of aerodromes" could include a requirement for consultations. We wonder if the purpose of the amendment is not to create an impression that the only reason for inaction to this point has been lack of authority, when in fact the authority already exists.

Fairness:

Another issue with the Act amendment is that it is one-sided. We recognize that the Minister is under pressure from public officials and the public regarding aerodrome development but there have also been several appeals from the aviation industry, including COPA, over many years concerning activities near aerodromes interfering with the safety and usability of aerodromes. TC's response in these cases has been that they have no power to prohibit these activities, except at a limited number of aerodromes where Federal Airport Zoning Regulations⁶ (AZRs) apply. TC has asserted that their only option at aerodromes without AZRs is to restrict or prohibit aviation.

I would like to emphasize that AZRs apply at only 150 aerodromes so this addresses only a fraction of the 570 certified aerodromes and thousands of other aerodromes. AZRs are difficult to attain and furthermore the AZRs are limited to restricting heights of buildings, structures and objects (including natural growth) and protecting aircraft from potential hazards, such as bird strikes and electronic signal interference. There is no ability for TC to restrict other interfering activities, such as residential developments that frequently cause friction between residents and aerodrome owners and users.

So, we believe that an expansion of Ministerial power to prohibit any aerodrome when there is no accompanying power to prohibit incompatible land uses near any aerodrome is simply unfair and not in the best interest of maintaining a system of aerodromes. The Act amendment should therefore be pulled until a more balanced approach to Ministerial power can be developed with industry input.

COPA's Position on Consultation for Aerodrome Development:

From the inception of TC's desire to amend regulations and the Act, COPA has maintained that we are not opposed to consultation. In fact our Guide to Private Aerodromes⁷ makes the following statements: "Invite your neighbours over to talk about your planned aerodrome before you start construction." "Let them know that you will listen if they have concerns over noise and safety, and that you are willing to accommodate their concerns. Explain circuit procedures and the need for occasional circuits for practice, which will help ensure your and their safety." "Contact (municipal officials) before you start construction of your aerodrome and facilities and talk to them about what you are planning to do, letting them know that it comes under federal jurisdiction and that you will abide by the national building code. Tell them that you are willing to keep them informed."

COPA's goal throughout the requirement to consult initiative has been to find a balance between involving local interests and ensuring that the future of aviation in Canada remains in the best interest of all people.

Parliamentary Review of the Act Amendment:

We are concerned that the Act amendment has not been assigned to the Standing Committee on Transport, Infrastructure and Communities. In our opinion, this is an important matter concerning the future of our air transportation system should have been examined by the committee charged with such matters.

Conclusion:

We understand TC's need to intervene in cases where abuses of federal jurisdiction occur, such as when a person declares that a landfill site is an aerodrome, but there are many legitimate cases where the creation or development of an aerodrome is very much in the best interests of the public, both aviators and non-

aviators. The Act amendment is too broad, gives the Minister unilateral power to circumvent all of the processes for consultation with little or no policy guidance that defines public interest as it relates to ensuring that an adequate system of aerodromes remains in Canada. For these reasons, COPA respectfully requests that the Act amendment be returned to TC for further work.

About COPA:

COPA is the largest Aviation Association in Canada, and since 1952 has been representing the interests of 17,000 Canadians who own and fly aircraft for personal transportation and recreation. Our mission statement is to protect Personal Aviation and promote it as a valued, integral and sustainable part of the Canadian community.

References:

1. Transportation in Canada 2011 – Addendum Table A1, page 164
<https://www.tc.gc.ca/media/documents/policy/Stats-Addend-2011-eng.pdf>
2. CARAC Activity Reporting Notice 2013-014, Preliminary Issues and Consultation Assessment
<http://wwwapps.tc.gc.ca/Saf-Sec-Sur/2/npa-apm/doc.aspx?id=10093>
3. Statutory Instruments Act <http://laws-lois.justice.gc.ca/eng/acts/S-22/FullText.html>
4. Testimony of Shari Currie
http://parlvu.parl.gc.ca/Parlvu/TimeBandit/PowerBrowser_SilverLight.aspx?ContentEntityId=12243&EssenceFormatID=477&date=20141105&lang=en
5. National Airports Policy <http://www.tc.gc.ca/eng/programs/airports-policy-menu-71.htm>
6. Federal Airport Zoning Regulations <https://www.tc.gc.ca/eng/ontario/air-azr-pickering-background-federal-1480.htm>
7. COPA Guide to Private Aerodromes is available to members of COPA only.