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Federal Labour Standards Review  
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**SUBMISSION TO THE FEDERAL LABOUR STANDARDS REVIEW COMMISSION  
BY  
THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (ALPA)  
RESPECTING PROPOSED AMENDMENTS TO  
THE CANADA LABOUR CODE, PART III**

**Summary:**

The Air Line Pilots Association, International (ALPA) raises two legislative gaps particularly affecting pilots:

- Protection against training bonds and particularly against training bonds whose terms are overreaching and exploitative, and
- Hours of work amendments that are tailored to societal norms and to the aviation industry.

ALPA recommends:

- That training bonds be prohibited. Alternatively, if training bonds are to be permitted, that they be subject to limitations reflecting only legitimate needs of the employer, and providing employee relief in the event of employer bankruptcy. To this end, ALPA puts forward recommendations already endorsed by the International Federation of Air Line Pilots Associations.
- That Labour Canada confers with aviation industry stakeholders to develop maximum hours of work protections as it has done for other transportation sectors.

### **Background/Implications:**

ALPA is a trade union representing the interests of pilots. ALPA represents over 2,000 pilots employed by five carriers in Canada. Internationally, ALPA represents 64,000 pilots at 41 airlines in the U.S. and Canada, and is a member of the International Federation of Air Line Pilots Associations (IFALPA). ALPA represents pilots in their employment relations, and is a key player in articulating policy concerns arising from this stewardship.

ALPA is concerned that the employment relationship and terms and conditions of employment embody public policy representing minimum standards, safety, and pilot professionalism.

In this brief, ALPA argues that the Canada Labour Code, Part III, lacks appropriate mechanisms to regulate and protect pilots in two key areas:

- Training bonds
- Hours of work

ALPA is further concerned that the absence of such protections undermines larger public policy goals set out in all three parts of the Canada Labour Code (free and effective rights to be represented by a trade union, minimum standards, and safety), and in the Canadian Aviation Regulations.

### **Issues:**

#### **Training Bonds:**

1. The 2004 bankruptcy of JetsGo left large numbers of its pilots personally responsible for the payment of “training bonds” effectively imposed on them as a condition of employment and advancement.
2. “Training bonds” are performance bonds which commit pilots to forfeit a sum money—usually substantial--alleged to represent the cost of their training, where the pilot ceases to be employed for a minimum period of time.
3. Training bonds are common in Canada among smaller carriers and carriers whose employees lack union representation. They are a clear example of unequal terms of employment imposed on the most vulnerable members of the profession: typically young pilots, new hires, and those without representation.
4. The amounts at issue can be stunningly huge, the equivalent of a small mortgage. Media reports indicate that in the case of JetsGo, substantial numbers of pilots found themselves liable for sums of \$30,000 or more. This at a time when they were thrown out of work.
5. The frank purpose of training bonds is coercion against employment mobility. Pilots subject to training bonds escape forfeiture only where they remain employed for a minimum period of time, often years. In effect, they create a form of indentured service.

6. Training bonds are typically required by employers at a time when the pilot is most vulnerable: young, inexperienced, and new in the profession. They are entered into in conditions in which bargaining power is most unequal: at the pre-employment phase as a condition of hire, and in companies whose employees lack effective representation.
7. The training bond arrangement typically requires a prospective new-hire to put up a sum of money subject to full or partial repayment where employment does not last a minimum period of time. Usually, this is in the form of a bank loan arranged by the employer prior to and as a condition of employment. Typically, the employer will make payments on the bond for its duration. However, where the pilot's employment ends prior to the time-frame of the bond, he or she is individually liable to the bank for the balance.
8. The terms of training bonds are unilaterally set as a condition of hire. Because they are not negotiated, the terms are usually one-sided and often go beyond the legitimate needs and interests of employers. For example, the sums and duration of the bond may not reflect the employer's actual training expenditure. And they may offload all of the risk of employment interruption onto the pilot, so that he or she remains liable even where wrongfully dismissed, laid off, or terminated as the consequence of a bankruptcy.
9. The existence of training bonds further tilts the employment relationship in the employer's favour for their duration. Pilots under threat of forfeiture are less likely to take risks associated with incurring employer displeasure. They may be less likely to hold employers accountable for safety, putting the travelling public at risk. They may feel constrained in their free choice to seek union representation. In both these ways, training bonds generate effects contrary to the public interest.
10. It is generally understood that employees unhappy with their terms and conditions of employment have two options: "exit" (seeking alternate employment with more favourable terms) or "voice" (seeking mechanisms to articulate their interests, such as union representation). Effectively, pilots subject to training bonds have neither the real option of "exit" or "voice".
11. Effectively, training bonds undermine the interests articulated in the Canada Labour Code, Part III. They typically contain terms which no employee would willingly enter into. Further, they perpetuate this dynamic for the duration of the bond.
12. Training bonds undermine the interests articulated in the Canada Labour Code, Part II: the fundamental freedom to seek representation by a trade union.
13. Finally, training bonds represent a check on the exercise of professional rights and obligations associated with safety under the Canadian Aviation Regulations.
14. ALPA argues that employers could realize the same goal of employment longevity through alternate strategies more in tune with the public interest: terms and conditions of employment (including seniority protections) which reward and encourage long service.

15. ALPA is opposed to training bonds for the reasons set out above. Our primary recommendation is that training bonds should be legislatively prohibited.
16. In the alternative, where employees or unions are compelled to negotiate training bonds with employers, the following protections should be applicable.

*Any training bond:*

- a) *should apply only to initial type conversion of new entry pilots not already licensed on type;*
- b) *should not exceed the actual direct cost incurred by the employer, proof of which should be provided by the employer;*
- c) *should be amortized over a period of not more than three years with the bond reducing to zero at the end of the agreed period, which period should commence at the beginning of training;*
- d) *should not be payable by a pilot who is furloughed, retrenched (retrenchment to include transfer to another company at the behest of the employer as part of any retrenchment or restructuring process and/or any operational reasons including liquidation), dismissed from the company or retired from the company, whether it be normal retirement or retirement on medical grounds;*
- e) *where it becomes payable, should be paid over a negotiated period with interest, where applicable, not exceeding prime lending rate, and should, if possible, be paid in a tax efficient manner;*
- f) *should be cancelled and regarded as null and void in the event of the company breaching the terms and conditions of employment.*

**Hours of Work:**

17. Maximum hours of work for labour standards purposes are regulated in Division I, Part III of the Canada Labour Code. In addition, work in the form of flight and duty time limits are regulated by the provisions of the Canadian Aviation Regulations made pursuant to the Aeronautics Act for the purposes of safety.
18. Special regulations have been made under the Canada Labour Code to address the specific conditions of the trucking, rail transport, and shipping industries. No comparable regulation addresses the needs and conditions of the air line industry and the pilot profession.
19. Pilot work typically includes periods of layover between flights during which the pilot, although not “actively” at work, is nevertheless under the control and direction of the employer and subject to rules of conduct, dress, and behaviour. The pilot is not at home and cannot freely dispose of his or her time. As a strict matter of law, this time should be included as “work” for the purposes of Part III of the Code. In addition, pilots typically are under the control and direction of the employer in a variety of scenarios (commuting, training, non-flying duties) which receive different valuations for pay purposes. As a strict matter of law, all such time should be considered “work” for the purposes of the Code.

20. Pilots are required to work long hours over extensive periods. For example, the current Canadian Aviation Regulations allow for airline pilot flight duty time periods in excess of eighty hours per week that, essentially, can only be tempered by the Labour Code averaging provisions or by a collective agreement. The situation for commercial pilots in air taxi and aerial work operations is even worse. For pilots, especially in seasonal operations, this results in long hours of work that far exceed what is deemed reasonable in Canadian society. ALPA submits that neither the provisions of the Canadian Aviation Regulations, nor the time averaging provisions of the Canada Labour Code, Part III, reflect societal norms. ALPA recommends that Labour Canada confer with aviation industry stakeholders to develop maximum hours of work protections that reflect the norms of Canadian society.

Should there be any questions on the preceding, please contact

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Yours sincerely,



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