



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA
K1A 0A6

The Standing Committee on Official Languages has the honour to present its

FIRST REPORT

Pursuant to Standing Order 108(3)(f), your Committee has considered the matter of the application of the Official Languages Act to ACE Aviation Holdings Inc. following the restructuring of Air Canada.

A. Context

Established by Parliament in 1937, Air Canada was a Crown corporation until 1988 when it was privatized. It was therefore subject to the provisions of the *Official Languages Act* (hereafter OLA), adopted in 1969, and its revised version of 1988.

The *Air Canada Public Participation Act* (hereafter ACPPA) provided the framework for the sale of Air Canada shares held by the Government of Canada and defined the airline's new obligations. This act stipulates that the head office must remain in Montreal, and section 10 clearly stipulates that the *Official Languages Act* applies to Air Canada after its privatization.

Following its acquisition of regional carriers Air BC, Air Ontario and Air Nova in the late 1990s, Air Canada held a near monopoly, which led the federal government to amend the legislation. During this process, the Commissioner intervened a number of times to ask the government to clarify the application of the OLA to Air Canada's new subsidiaries.¹ Various amendments were made with the adoption in June 2000 of Bill C-26, which amended the ACPPA, by stipulating specific criteria relating to the application of the OLA to Air Canada.

Bill C-26 confirmed in 2000 that Air Canada is subject to the OLA in its entirety. Section 10 of the ACPPA requires Air Canada to ensure that its subsidiaries are able to communicate with customers and offer them air and incidental services in both official languages or, if it is offering the services itself, it is subject to this requirement pursuant to Part IV of the OLA.² The

¹ In the fall of 1999, the Commissioner appeared before the House of Commons Standing Transport Committee and before the Standing Joint Committee on Official Languages.

² "Incidental services are defined as including (a) ticketing and reservation services; (b) information, including notices and announcements, that it publishes or causes to be published to inform its customers in respect of its routes or traffic; (c) services provided or made available to customers at an airport, including the control of passengers embarking and disembarking aircraft and announcements directed at customers and counter services; and (d) services related to baggage or freight claims and client relations." Office of the Commissioner of Official Languages, *Language Rights 1999-2000*, available online at http://www.ocol-clo.gc.ca/archives/lr_dl/1999-2000/1999-chap7-2_e.htm.

subsidiaries are not however subject to the provisions of Part V of the Act relating to language of work.

Another important change occurred when Air Canada officially purchased Canadian Airlines International Limited and Canadian Regional Airlines Limited on January 1, 2001. This merger created ambiguity as to whether the collective agreement for employees of Air Canada subsidiaries took precedence over these subsidiaries being subject to the OLA. The Federal Court decision, rendered in December 2005, confirmed that the OLA takes precedence.

In 2002, the Standing Joint Committee on Official Languages published a damning report about the official languages at Air Canada. The report included the following recommendation:

The Committee recommends that the Minister of Transport order a re-examination of section 10, as part of the legislative review provided for in the *Air Canada Public Participation Act*, so that the wording clearly stipulates that Air Canada and its subsidiaries are subject to the *Official Languages Act* in its entirety, in the same way as a federal institution.³

On April 1, 2003, Air Canada placed itself under the protection of the *Companies' Creditors Arrangement Act* and embarked on a restructuring process, which ended on September 20, 2004.

An important aspect of the restructuring of Air Canada is its new organizational structure, which was established on October 1, 2004. Air Canada became a wholly-owned subsidiary of a new parent company, ACE Aviation Holdings Inc. Moreover, a number of former subsidiaries and internal divisions of Air Canada became limited partnerships and then reported directly or indirectly to ACE Aviation Holdings Inc. This restructuring created a legal void as to the obligations of the new entities under the OLA.

At present, Air Canada is still subject to the requirement of keeping its head office in Montreal and its maintenance centres in Montreal, Winnipeg and Mississauga, and its obligations under the ACPPA and the OLA still apply. Yet none of these acts apply to the activities entrusted to limited partnerships that report directly or indirectly to ACE Aviation Holdings Inc. and are now Air Canada subsidiaries, such as Jazz Air. Moreover, ACE Aviation Holdings Inc., the parent company, to which all entities in Air Canada's new structure report directly or indirectly, is not subject to the official language requirements or the requirements regarding the company's head office.

On May 2, 2005, the Minister of Transport issued a press release indicating that he intended to introduce a bill designed to:

“to ensure that official languages obligations continue to be in place for Air Canada and its former internal divisions and subsidiaries, and that certain official languages obligations, as well as a requirement to maintain the Air Canada head office in Montreal, are extended to ACE

³“Recommendation 10” from *Air Canada: Good Intentions Are Not Enough*, Seventh Report of the Standing Joint Committee on Official Languages, February 2002, available online at: <http://www.parl.gc.ca/infocomdoc/37/1/LANG/Studies/Reports/langrp04/03-cov-e.htm>

Aviation Holdings, the new holding company that controls Air Canada. The existing requirement for Air Canada to operate maintenance bases in Montreal, Winnipeg and Mississauga continues to apply.”⁴

This led to the introduction of Bill C-47, which died on the order paper in November 2005. The key features of the bill were as follows:

- **ACE Aviation Holdings Inc.** required to maintain its head office in Montreal;
- **Air Canada** and all its affiliates continue to be subject to the *Official Languages Act* in its entirety;
- **Air Canada Jazz** subject to Part IV (communications with and services to the public) of the *Official Languages Act*, but not Part V (language of work), Part VI (equal participation of English-speaking and French-speaking Canadians) and Part VII (development of communities and linguistic duality), pursuant to an amendment to the act adopted in 2000;
- Obligations maintained for the former internal divisions of Air Canada that were separated off and are now entities managed by the federal government, i.e., **Air Canada Technical Services, Air Canada Cargo, Air Canada Ground Handling Services and Air Canada Online Services**, although some ambiguity remains since these entities are not specifically mentioned in the bill;
- **Aeroplan** would not have been subject to the same provisions as the former internal divisions of Air Canada, because the company would not fall under the legislative jurisdiction of Parliament;
- As a separate entity prior to restructuring, **Air Canada Vacations** would not have been subject to the *Official Languages Act*.

According to the Commissioner of Official Languages, some aspects of this bill left room for interpretation that could potentially have reduced the linguistic obligations of Air Canada, ACE Aviation Holdings Inc. and their subsidiaries. Further to her appearance before the House of Commons Standing Transport Committee on November 22, 2005, she proposed amendments to specifically name the components of ACE Aviation Holdings Inc. that are subject to the *Official Languages Act*.

B. Committee’s Recommendations

After analyzing the repeated statements by the Commissioner of Official Languages, the February 2002 report of the Standing Joint Committee on Official Languages, and the House of

⁴ “The Government of Canada preserves official language protection in the restructured Air Canada,” Press Release, May 2, 2005, available online at <http://www.tc.gc.ca/medias/communiques/nat/2005/05-h094e.htm#bg> .

Commons debates at second reading of Bill C-47 on November 3, 2005, the members of the House of Commons Standing Committee on Official Languages were convinced of the need to introduce a new bill. It would repeat the essential features of Bill C-47, adding the amendments proposed by the Commissioner of Official Languages.

The House of Commons Standing Committee on Official Languages accordingly recommends:

- 1. That the Minister of Transport, Infrastructure and Communities reintroduce in the shortest possible time another bill repeating the provisions of Bill C-47, and adding the amendments suggested by the Commissioner of Official Languages when she appeared by the Standing Committee on Transport on November 22, 2005;**
- 2. That the new bill stipulate that Air Canada continue to be subject to the *Official Languages Act* in its entirety;**
- 3. That the new bill stipulate that the divisions of Air Canada that became limited partnerships during or after the restructuring (including Air Canada Technical Services, AC Cargo, Air Canada Ground Handling Services and Air Canada Online Services) are subject to the *Official Languages Act* in its entirety;**
- 4. That the new bill stipulate that the companies that were Air Canada subsidiaries prior to the restructuring, including Jazz Air, Air Canada Vacations and Aeroplan, are subject to Part IV (language of service) of the *Official Languages Act*;**
- 5. That the legislative review of the new bill be referred to the Standing Committee on Official Languages.**

APPENDIX

BILL C-47 (38TH PARLIAMENT, FIRST SESSION) - AN ACT TO AMEND THE AIR CANADA PUBLIC PARTICIPATION ACT: PROPOSED CHANGES PRESENTED BY THE COMMISSIONER OF OFFICIAL LANGUAGES

1. Subsection 10.2(1)

We believe that Ground Handling, Technical Services, Cargo and Air Canada Online must be explicitly covered by this provision. As such, it would be possible to maintain the conceptual approach favoured by the Legislator while clearly specifying that the *Official Languages Act* applies to these entities and guaranteeing the status quo that is sought by the Government. Therefore, we propose that subsection 10.2(1) be amended as follows:

10.2 (1) Subject to subsections (2) to (4), the *Official Languages Act* applies to any affiliate of the Corporation in respect of any undertaking that the affiliate owns or operates and that comes within the legislative authority of Parliament in respect of aeronautics, **including but not limited to, Ground Handling, Technical Services, Cargo and Air Canada Online.**

2. Subsection 10.2(4)

In order to ensure that Ground Handling, Technical Services and Cargo are not excluded from the application of subsection 10.2(1), the following amendments should be made:

10.2 (4) This section does not apply in respect of

(a) an undertaking that is owned or operated by an affiliate of the Corporation other than

(i) ACE Aviation Holdings Inc., a body corporate incorporated on June 29, 2004 under the *Canada Business Corporations Act*,

(ii) a body corporate or a partnership controlled by ACE Aviation Holdings Inc. **or one of its affiliates**, or

(iii) a partnership controlled by a person controlled by ACE Aviation Holdings Inc.;

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (*Meeting No. 3*) is tabled.

Respectfully submitted,

Guy Lauzon, M.P.
Chair