Legislative Summary **LS-453E**

BILL C-27: CANADA AIRPORTS ACT

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LEGISLATIVE HISTORY OF BILL C-27

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	20 March 2003	First Reading:	
Second Reading:		Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BACKGROUND

On 20 March 2003, the Hon. David Collenette, Minister of Transport, introduced in the House of Commons Bill C-27, the Canada Airports Act. A ministerial press release issued on the same date noted that the bill modernizes the corporate governance regime for airport authorities and establishes a framework for disclosure and accountability for Canada's major airports.

The bill contains a new National Airports Policy declaration that replaces the current National Airports Policy, which was announced in 1994 and provided the framework that enabled the federal government to promote the commercialization of federally owned airports. The bill completes the legislative framework for Canada's transportation infrastructure (in all modes), in keeping with other legislative initiatives such as those for Canada's air navigation and ports systems.

The bill sets out the respective roles and responsibilities of the federal government and the affected airport operators.

Departmental sources indicate that the introduction of the bill is the culmination of five years of extensive studies, stakeholder consultations and policy development. It takes into account the recommendations from the Local Airports Authority Lease Review (1997-2000); the Auditor General's Report of October 2000; the June 2001 Report of the *Canada Transportation Act* Review Panel; the September 2002 Report of the Independent Transition Observer on Airline Restructuring; and the Twenty-first Report (May 2002) of the House of Commons Standing Committee on Public Accounts (concerning airport transfers). It

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

draws upon 10 years of post-divestiture experience. It also fulfils one of the commitments made in the federal government's White Paper entitled *Straight Ahead – A Vision for Transportation in Canada* (25 February 2003), and contributes to the government's governance agenda as set out in the 2002 Throne Speech.

DESCRIPTION AND ANALYSIS

A. Short Title, Interpretation, Application of Proposed Act and National Airports Policy (clauses 1-7)

1. Short Title and Interpretation

Bill C-27 is entitled the Canada Airports Act (clause 1). Clause 2 sets out the relevant definitions for purposes of interpreting the bill.

2. Application of Proposed Act

The bill is binding on both the federal and provincial Crowns (clause 3). The bill does not apply to airports operated under the authority of the Minister of National Defence (clause 4).

The Governor in Council may, by order, amend Schedules 1 or 2 to the bill (clause 5). Schedule 1 lists airport authorities, airports, and transfer dates, i.e., the date of the legal transfer of the management of an airport from the federal government to an airport authority. Considering that certain parts of the bill apply only to airports listed in Schedule 1, a mechanism is required to make amendments from time to time to this listing. Schedule 2 is the listing of airports, *other than* those operated by airport authorities and listed in Schedule 1, or airports operated by the territories or airports with traffic greater than 200,000 enplaned and deplaned passengers per year, but which are nevertheless considered significant and therefore subject to the bill.

In case of an inconsistency between a previously existing lease of an airport to an airport operator and provisions of the bill, the latter prevails (clause 6).

3. National Airports Policy

A new National Airports Policy declaration is set out in clause 7, replacing the 1994 National Airports Policy statement, which was focused on commercialization of federally owned airports.

Departmental officials point out that, since 1994, there have been significant changes to the air industry and the new, modernized airports policy statement better reflects the interests of Canadians and the needs of the airport community.

B. Part 1 – Roles, Powers and Obligations (clauses 8-34)

1. Minister's Role and Powers

Clause 8 sets out the role of the Minister of Transport, which is to protect the public interest in respect of airports, in a manner consistent with the national airports policy set out in clause 7. The Minister may at any time audit or review, or cause to be audited or reviewed, the business and affairs of an airport authority (clause 9(1)). This power is considered necessary in order for the Minister to fulfil his or her role under clause 8. The person conducting the audit or review has all the powers of an inspector, whose powers are set out under Part 7 of the bill (clause 9(2)). These powers are required to ensure that all of the relevant information required for the audit or review will be made available.

No person other than the Minister, or a person whom the Minister has authorized in writing, may exercise any of the Minister's powers under the bill (clause 10). This provision ensures that airport authorities can be shown official proof of delegation by the Minister.

Nothing in the bill derogates from the Minister's powers under any other federal statute (clause 11).

Clause 12(1) provides that a direction made by the Minister under the bill is not a statutory instrument within the meaning of the *Statutory Instruments Act*. Departmental sources point out that a Ministerial direction is made only in exceptional circumstances and, in those rare cases where the Minister has need to issue a direction, compliance with the direction must be *timely*, if not immediate. They note that the provisions of the *Statutory Instruments Act* are not suited to the need for timely implementation of such directions.

A Ministerial direction is final and is not subject to review by a court (clause 12(2)). Court review would interfere with the timely implementation of a direction. As well, no action for damages may be brought in respect of measures taken pursuant to a Ministerial direction (clause 12(3)). The Minister may issue any direction subject to the terms and conditions that the Minister considers appropriate (clause 12(4)).

A review of the bill must be completed by the Minister after the fifth year following Royal Assent to the bill. A report of the results of the review must be laid before each House of Parliament on any of the first 15 days on which the House is sitting after the report is completed (clause 13).

2. Emergency Orders

Clause 14(1) provides the Governor in Council with the authority to take steps (or direct an airport operator or any other person to take any steps), by order, that it considers essential to protect "critical airport infrastructure" if it is of the opinion that an extraordinary disruption to the continued operation of airports exists or is imminent (excluding a labour disruption); that a failure to act would be contrary to the interests of users or the public; and that no other provision of the bill or another federal Act is sufficient to remedy the situation. The rationale, according to departmental officials, is that the federal government must be able to act in the interests of the public in order to protect the critical airport infrastructure in the country. The order has effect for no more than 90 days after it is made, but it may be renewed by the Governor in Council for one further period of 90 days (clause 14(2), (3)). The Minister must cause such an order to be laid before both Houses of Parliament within seven sitting days after the order is made (clause 14(4)). The order laid before Parliament must be referred for review to the standing committee designated by Parliament for the purpose (clause 14(5)). A resolution that the order be repealed may be adopted by both Houses of Parliament before the expiry of 30 sitting days of Parliament after the order is laid before both Houses, in which case the order ceases to have effect on the day on which the resolution is adopted or, if the adopted resolution specifies a day on which the order ceases to have effect, on that specified day (clause 14(6)). The order is not a statutory instrument within the meaning of the *Statutory Instruments Act* (clause 14(7)). For purposes of the above, "critical airport infrastructure" is defined in clause 14(8) to mean:

> the facilities, services, property and information systems that support the operation of airports and that are essential to the health, safety, security and economic well-being of Canadians or to the effective functioning of one or more governments in Canada.

3. Role and General Obligations of Airport Operators

The role of airport operators is to operate their airports in a manner consistent with the National Airports Policy and the bill (clause 15).

Airport operators must provide to the Minister, in the form and manner and within the time specified by the Minister, information that the Minister considers necessary to exercise his or her powers and to carry out his or her duties and functions (clause 16). Airport operators must take whatever measures are necessary to permit Canada to meet its international obligations under bilateral and multilateral agreements in respect of aeronautics and trade (clause 17). Canada is a signatory to a number of international treaties and conventions (for example, NAFTA) and airports play a role in fulfilling Canada's obligations under these agreements.

Operators of airports serving international traffic must erect signs welcoming passengers to Canada, as well as display the Canadian flag, in prominent places for arriving international passengers; they must also display the Canadian flag in other prominent places at the airport (clause 18(1)). The Governor in Council may make regulations in the above regard (clause 18(2)). As well, airport operators must assist the government at their airports in welcoming and facilitating state visits to Canada by foreign dignitaries (clause 19).

Airport operators must permit landing and taking off at airports, free of charge, by all Canadian military aircraft and all civil aircraft owned by and exclusively used in the service of the federal Crown or the government of a foreign state, other than a state that the Governor in Council designates, by order, as one in respect of which fees may be imposed (clause 20). The exception is necessary in order to permit Canadian airports to charge fees to specific states that, contrary to international practice, charge Canadian state aircraft that land or take off from their airports.

Clause 21 concerns information about "fees," which are defined in clause 2 to mean aeronautical fees or passenger fees or both. An "aeronautical fee" is defined in the same clause to mean a charge imposed on air carriers or other operators of an aircraft for their use of "airside and terminal facilities and services" (also defined in clause 2), for example, landing fees and terminal fees. A "passenger fee" is defined in that clause to mean a charge imposed on passengers for their use of the above facilities and services. There is a need for separate definitions of aeronautical and passenger fees because some of the requirements of Part 6 concerning fees differ depending on whether the fees are aeronautical or passenger fees.

Upon request, airport operators must make available to any person the following information about fees imposed at their airport: the amount of each fee; the persons subject to each fee and the conditions for becoming subject to it; and the method the airport operator uses for collecting fees (clause 21(1)). Airport operators must post an electronic version of the information on their Internet site, if they have one (clause 21(2)).

Airport operators must also provide, on request, any facilities, land, services and human resources that are required by the Minister or another minister designated under the *Emergency Preparedness Act* to fulfil their responsibilities under that Act (clause 22).

Subject to two specified exceptions, no airport operator may disclose any financial, commercial or technical information supplied to it by an air carrier and that is consistently treated as confidential by the air carrier (clause 23(1)). One exception is where information must be supplied by an airport operator to the Minister pursuant to clause 16 to enable the Minister to carry out his or her duties. The other is where the disclosure is made in such a way that it does not identify, or permit the identification of, the air carrier (clause 23(2)).

4. Equitable Access to Airport Facilities

Clause 24(1) requires airport authorities and other airport operators to provide, to air carriers who operate aircraft at their airports, equitable access to the facilities or air terminal building described in sub-paragraphs (a)(i) to (iv) of the definition of "essential activities" in clause 2. However, airport operators are not required to construct a new facility or air terminal building or expand an existing one in order to comply with the above requirement (clause 24(2)). A couple of exceptions to clause 24(1) are set out in clause 24(3).

Clause 25(1) requires airport operators to publish a declaration describing how they plan to meet their equitable access obligations under clause 24. The declaration, the requisite contents of which are spelled out in clause 25(3), must be made within one year after the coming into force of clause 25 or within one year after the day on which the person becomes an airport operator (clause 25(2)). The declaration must be updated when there is a change of information regarding any of its contents (clause 25(4)).

Clause 26(1) authorizes the Minister to direct an airport operator to take any measures that, in his or her opinion, are necessary to bring the operator into compliance with its equitable access obligations under clause 24(1). Clause 26(2) provides the Minister with additional authority to issue a direction in the circumstances spelled out therein.

5. Slots

A "slot" is defined in section 2 for purposes of the bill to mean a period that is allocated to any person during which an aircraft operated by that person is authorized to land at or to take off from an airport. Slots are the property of the federal Crown (clause 27). Departmental sources point out that slot availability and time can be an important factor affecting the level of air services competition in Canada. Therefore, affirmation of federal Crown ownership ensures that, where necessary, intervention is possible to ensure the proper management of slots.

Clause 28(1) authorizes the Minister to make an order designating any airport as an airport requiring slot allocation, after consultation with the airport operator and NAV CANADA. The Minister may specify in the order the periods for which it applies and the maximum number of slots that may be allocated over a specific period. The Minister may, by order, cancel, amend or renew a designation (clause 28(2)).

If the Minister designates an airport as an airport requiring slot allocation or if the air carriers operating at an airport, after consultation with the airport operator, decide that slot allocation is desirable, the air carriers and the airport operator may, by agreement, select a slot coordinator (clause 29(1)). The air carriers and the airport operator may agree on the terms for engaging a slot coordinator, including the amount of the slot coordinator's remuneration and their responsibilities for paying it (clause 29(2)). In cases where air carriers and the airport operator do not agree on the selection of a slot coordinator or the terms of the slot coordinator's engagement, the Minister is given the authority to select the coordinator or decide on the terms for the coordinator's engagement (clause 29(3)). Slot coordinators are not agents of the federal Crown (clause 29(4)).

Clause 30(1) requires the slot coordinator to allocate, renew and withdraw slots in accordance with the regulations or, if there are none, in a manner consistent with the slot allocation procedures applied by the international air transport industry. Subject to clause 32, the slot coordinator may allocate, renew or withdraw slots only if the airport operator has confirmed the availability of the necessary facilities and services at the air terminal building (clause 30(2)).

Clause 31(1) requires the airport operator and air carriers operating at the airport to provide the slot coordinator with any information in their possession that, in the opinion of the slot coordinator, is required to carry out his or her functions. Subject to the exceptions noted

below, the slot coordinator must not disclose any financial, commercial or technical information if it is confidential information supplied by an air carrier or airport operator that is consistently treated as confidential information by the air carrier or operator (clause 31(2)). However, the information may be disclosed if the disclosure is made in such a way that it does not identify the source of the information (clause 31(4)). As well, the slot coordinator must provide to the Minister information that the Minister considers necessary to exercise his or her powers, duties or functions (clause 31(3)).

Clause 32(1) permits the Minister to direct a slot coordinator, or an airport operator in the absence of a slot coordinator, to allocate, renew or withdraw any slot, or a number of slots within a specified period, if, in the Minister's opinion, it is necessary for ensuring equitable access to slots by domestic air carriers providing domestic air services. Clause 32(2) authorizes the Minister, with the concurrence of the Minister of Foreign Affairs, to direct a slot coordinator, or the airport operator if there is no slot coordinator, to withdraw a slot from foreign carriers or to withdraw from them a number of slots within a specified period. (The Canadian government currently does not have the authority to withdraw slots at Canadian airports from foreign carriers.) A direction of the Minister prevails over regulations made to the extent of any inconsistency (clause 32(3)).

Clause 33(1) prohibits a person who has been allocated a slot from selling or transferring it. However, notwithstanding that prohibition, a person who has been allocated a slot may, in accordance with the regulations, lend the slot free of charge to another person or exchange it for another slot. In the absence of regulations, the loan or exchange may be made only after giving notice to the slot coordinator or, if there is none, to the airport operator (clause 33(2)). Departmental officials point out that the prohibition of outright sale or permanent transfer of slots protects against misuse of slots for competitive reasons, namely, prevention of other airlines from obtaining slots.

Clause 34 enables the Governor in Council to make regulations respecting slots, including the selection of slot coordinators; the allocation, renewal and withdrawal of slots; and the loan or exchange of slots.

C. Part 2 – Continuance and Incorporation of Airport Authorities (clauses 35-58)

1. Continuance

Clause 35(1) provides for airport authorities that are *federally* incorporated under Part II of the *Canada Corporations Act*, to be listed in column 1 of Part 1 of Schedule 1 and to be continued as corporations under the bill, under the names set out in column 2 of Part 1 of Schedule 1. Clause 35(2) empowers the Governor in Council to continue, by order, any of the airport authorities incorporated under a *provincial* statute and whose name is set out in column 1 of Part 2 of Schedule 1 by adding the authority to column 2 of Part 1 of Schedule 1, after the continuance under the bill as a corporation is authorized by the laws of the province where it is incorporated. The authority is continued under the bill as a corporation under the name set out in column 2 of Part 1 of Schedule 1 on the day on which its name is added to Part 1 of Schedule 1.

Each airport authority's incorporating documents, other than its by-laws, cease to have effect on the day it is continued under the bill (clause 35(3)). Airport authorities must, within three months of being continued under the bill, deliver to the Minister copies of new by-laws that are consistent with the bill. Their existing by-laws remain in force until replaced by the new by-laws (clause 35(4)).

The designations of airport authorities as designated airport authorities under the *Airport Transfer (Miscellaneous Matters) Act* remain in effect (clause 35(5)). This provision is necessary to ensure that the benefits and obligations of being a designated airport authority under the above Act are not lost upon the coming into force of the bill.

Any reference in any document to an airport authority under its name prior to continuance as a corporation under the bill is deemed to be a reference to the airport authority under the name under which it is continued under the bill (clause 35(6)).

Clause 36(1) authorizes the Governor in Council to make an order adding the name of a new airport authority to Part 1 of Schedule 1; the order must name the authority's first directors and contain its first by-laws. This provision thus allows for new airport authorities to be created and to come under the bill in the future. On the day on which the name of a new airport authority is added to Part 1 of Schedule 1, it becomes a corporation governed by the bill (clause 36(2)).

Clause 37 provides that the property, rights and obligations of an airport authority that is continued as a corporation under the bill continue as the property, rights, and obligations of the corporation.

Clause 38(1) requires an airport authority listed in Part 1 of Schedule 1 to file new by-laws that are consistent with the bill with the Minister within *three months after the clause comes into force*. Subsequent amendments to those by-laws must be filed with the Minister within 30 days after they are made. Similarly, pursuant to clause 38(2), an airport authority incorporated under provincial statute and currently listed in column 1 of Part 2 of Schedule 1, but whose name is added to Part 1 of Schedule 1 by order of the Governor in Council (referred to in clause 35(2)), must file new by-laws with the Minister that are consistent with the bill within *three months after the order is made*. Any subsequent amendment to those by-laws must be filed with the Minister within 30 days after it is made.

If the Minister is of the opinion that the by-laws of an airport authority do not comply with the bill, the Minister may, within 90 days after the day on which the by-laws or any amendments are filed, direct the authority to amend its by-laws to ensure compliance and specify in the direction the date before which the amendment must be made (clause 38(3)). The airport authority must inform all "selecting bodies" (as defined in clause 2) without delay of any changes to its by-laws (clause 38(4)). Any by-laws (or amendments) that do not comply with clause 38 cease to be in force (clause 38(5)).

Clause 39 requires the by-laws referred to in clause 38 to provide for amendments to the airport authority's nomination and appointment process to make it comply with the bill as soon as possible and not later than the time period specified therein.

No by-law, plan or other document that an airport authority is required to have, adopt or prepare under the bill is a statutory instrument within the meaning of the *Statutory Instruments Act* (clause 40). This eliminates the possibility that these documents would be considered statutory instruments, which would have the effect of imposing the formal publication requirements for statutory instruments (under the above Act) on airport authorities in the preparation of these documents.

2. Head Office, Dissolution, and Powers and Capacity

The head office of an airport authority must be at or near the airport leased to it, or in the principal municipality that is served by the airport (clause 41).

Clause 42(1) authorizes the Governor in Council to dissolve, by order, an airport authority by deleting its name from Part 1 of Schedule 1 if the Governor in Council is satisfied that the authority has adequately provided for the payment or discharge of all its obligations. Upon dissolution, all property of the airport authority is transferred to the federal Crown or, alternatively, to a successor organization to the authority designated by the Minister (clause 42(2)).

In the case of dissolution, clause 43 authorizes the Governor in Council to take, by order, any measures that are necessary for the transfer of property and the continued operation of the airport.

Clause 44(1) establishes that the purpose of an airport authority is to carry out its "airport undertaking" (defined in clause 2 to mean a business consisting of the operation, management, maintenance and development of an airport) in a manner consistent with the bill. In so doing, the airport authority must take into account the interests of users, the airport's contribution to the national air transportation system and the airport's contribution to the economy and the public of the region it serves (clause 44(2)).

An airport authority is not an agent of the federal Crown (clause 45). The reason for this provision is to ensure that the Crown does not become liable for the debts of airport authorities. In principal/agent relationships, the principal is liable for the activities of the agent.

Clause 46(1) provides that, subject to the bill, an airport authority has the legal capacity of a natural person. In addition, it may make by-laws, and it may issue a bond or debenture or other evidence of indebtedness (clause 46(2), (3)). Because natural persons cannot make by-laws and issue bonds or debentures, those powers must be explicitly given by the bill.

An airport authority is a corporation without share capital. It must apply all its revenues towards promoting its purpose in accordance with the bill and may not distribute any surplus (clause 47). The reason for this provision is that in order for airport authorities to retain their ability to be non-taxable, they must retain their not-for-profit status.

Clause 48 authorizes an airport authority to invest moneys in its reserves, or moneys not required in the short term, only in the financial instruments referred to in that provision.

After entering into an agreement, an airport authority or its guarantor cannot claim that the transaction is invalid because its by-laws did not authorize the transaction, or the authority's director, officer or agent acted beyond his or her powers, or the documents used by any of these officials were not valid (clause 49(1)). The above does not apply, however, if the

person who acquired rights under the transaction knew or should have known that the party acting for the airport authority was acting beyond his or her powers; that the by-laws were not complied with; or that the documents were invalid (clause 49(2)).

3. Activities of Airport Authorities

Clause 50(1) provides that an airport authority may not own or operate any business or undertaking that is not an "airport undertaking," defined in clause 2 to mean a business consisting of the operation, management, maintenance and development of an airport. Clause 50(2) sets out the general rule regarding permissible activities in which an airport authority may engage in its airport undertaking. An airport authority must carry out its airport undertaking alone, and not in partnership or as a joint venture with any person (clause 50(3)). It must not hold an ownership interest in, or operate as, or be, an air carrier (clause 50(4)).

According to clause 51(1), "essential activities" (as defined in clause 2) may be carried out only a) by an airport authority; or b) by a person who acts on behalf of the airport authority and who meets the requirements spelled out in clause 51(1)(b). In carrying out essential activities, an airport authority may enter into a contract with any person for the provision of services to the airport authority if the person conducts its transactions with the authority on commercial terms and is not an entity in which the authority holds an interest (clause 51(2)). An exception is set out in clause 51(3).

"Complementary activities" (as defined in clause 2) may be carried out only by an airport authority itself, a corporation referred to in clause 54(1), or by any other person who is not a corporation in which the airport authority holds an ownership interest (clause 52(1)). An exception is set out in clause 52(2).

4. Investments in Other Corporations

Clause 53 needs to be read in conjunction with clause 50(1) which, as noted above, stipulates that an airport authority may not own or operate any business or undertaking that is not an airport undertaking as defined in clause 2. Clause 53 provides that no airport authority may have an ownership interest in any entity except a subsidiary or a corporation referred to in clause 54(1). As well, no subsidiary may have an ownership interest in any entity except a corporation. A subsidiary is defined in clause 2 to mean any corporation of which an airport authority holds more than 50% of the shares, either directly or through one or more other corporations of which it holds more than 50% of the shares.

Clause 54(1) sets out the criteria that Canadian-controlled corporations must meet in order for an airport authority to be permitted to have an ownership interest in them. The Governor in Council may make regulations respecting the criteria, including additional criteria, that are applicable to those Canadian-controlled corporations (clause 54(2)).

The chairperson of an airport authority is prohibited from being the chairperson of a Canadian-controlled corporation in which the airport authority has an ownership interest under clause 54; and not more than 49% of the directors of the airport authority can be directors of that corporation (clause 55(1)). Those Canadian-controlled corporations in which an airport authority is permitted to have an ownership interest as spelled out in clause 54 are required to disclose the details of contracts involving expenditures of more than $100,000 that were not awarded by public bid solicitation process (clause 55(2)).

Clause 56(1), concerning subsidiaries, should be read in conjunction with clause 53, referred to above. A subsidiary of an airport authority must meet the criteria spelled out in clause 56(1). The Governor in Council may make regulations respecting the above criteria, including additional criteria applicable to subsidiaries (clause 56(2)). The chairperson of the airport authority may not be the chairperson or chief executive officer of a subsidiary (clause 56(3)). Less than 50% of the directors of the airport authority may be directors of a subsidiary (clause 56(4)).

Clause 57(1) permits airport authorities to invest in other corporations in any year the lesser of 1) the amount by which 10% of its unconsolidated gross revenues for the previous fiscal year exceeds its total financial exposure to date, and 2) 2% of its unconsolidated gross revenues for the previous fiscal year. Clause 57(2) enumerates the elements that are included in the calculation of "financial exposure." Clause 57(3) requires a corporation in which an airport authority holds an ownership interest to pay an annual dividend to its shareholders in the amount specified therein. However, a dividend is not to be paid if it would put the corporation at risk of bankruptcy (clause 57(4)). Clause 57(5) provides that an airport authority may not hold an ownership interest in another corporation unless the corporation agrees to indemnify the authority for any amount that it is required to pay in respect of that corporation, other than the amount that is included in the airport authority's financial exposure (as calculated in clause 57(2)) with respect to that corporation.

Within 30 days after the coming into force of clause 58, each airport authority must submit to the Minister a statement of the total amount of the authority's financial exposure in any corporation in which it had an ownership interest and details of those investments as of the coming into force of the clause (clause 58(1)). Despite the 10% limit on financial exposure (clause 57(1)), the Minister may permit that limit to be exceeded if the Minister considers it necessary in order to retain Canadian control over a Canadian-controlled corporation referred to in clause 54(1) or a subsidiary referred to in clause 56(1) that was in existence on 1 January 2003 (clause 58(2)). Clause 58(3) requires an airport authority and all other corporations in which it has an interest to meet the requirements of clauses 53 to 57 (regarding investments in other corporations) within five years after the coming into force of clause 58.

D. Part 3 – Corporate Governance (clauses 59-99)

1. Application

Part 3 applies to airport authorities set out in Part 1 of Schedule 1 (clause 59).

2. Nomination, Appointment and Removal of Directors

The board of an airport authority consists of not less than 11 and not more than 15 directors, the number of which is set by the by-laws of the authority (clause 60). The directors are appointed for a term of not more than three years (clause 61(1)); their terms are renewable, but the total duration of the terms held by any director after the transfer date (defined in clause 2) must not generally exceed nine years (clause 61(2)). There is an exception in that the total duration of the terms held after the transfer date by one director on the board of any airport authority may exceed nine years, but may not exceed 12 years (clause 61(3)). Directors holding office on the day the bill is assented to may continue to hold office for a period of three years or until the expiry of their term, whichever occurs first (clause 61(4)). The directors holding office on the day the bill is assented to may be appointed as directors if they meet the requirements of the bill (clause 61(5)).

The by-laws of an airport authority must provide for the process of nomination, appointment and removal of directors (clause 62). Clause 63 sets out details regarding nomination or appointment of directors, including the "selecting bodies" that are involved in the process. The directors must collectively have the skills and knowledge necessary to carry out the duties of the board, and have the necessary experience in law, engineering, accounting, management and the air carrier industry (clause 64).

When a director ceases to hold office or there is an upcoming vacancy, the airport authority must, without delay, notify the relevant selecting bodies (as described in clause 63) of the vacancy and submit to the selecting bodies information regarding the required qualifications for becoming a director and the particular skills, knowledge and experience needed by the board at that time (clause 65(1)). The selecting bodies must consider that information as well as consult with the governance committee established by the board under clause 85 prior to nominating or appointing a director (clause 65(2), (3)).

Before a director's initial appointment, the airport authority must conduct, for individuals interested in becoming directors, at least one information session on the purpose of an airport authority, the respective roles of the authority and the Minister, and the powers, duties and functions of directors (clause 66).

Clause 67 specifies the circumstances under which a *selecting body* referred to in clause 63 may, or in certain cases must, revoke the appointment of a director whom it appointed. Similarly, clause 68 specifies the circumstances when the *board* may, or in some cases must, revoke the appointment of a director it has appointed.

A director may resign by following the procedure set out in clause 69, which also sets out the effective date of resignation.

3. Directors

Clause 70 sets out details regarding the activities, personal circumstances and relationships by reason of which persons are ineligible to hold office as a director.

Directors of the board of, and officers of, airport authorities must, in exercising their powers and duties, act honestly and in good faith with a view to the best interests of the authority, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (clause 71(1)).

The board or a director may, in accordance with the by-laws and at the expense of the airport authority, retain the services of an independent professional to enable the board or director to exercise their powers and duties (clause 72).

Clause 73 allows for and, in certain cases, requires the indemnification of a director or officer of an airport authority for costs and expenses reasonably incurred in respect of civil, criminal, administrative, investigative or other proceedings in which they are involved because of their association with the authority. Certain limitations are provided in the clause.

4. Board Duties, Chairperson and Meetings

Clause 75(1) provides that the board is responsible for establishing the strategic direction of the airport authority, for taking important decisions for the authority and for overseeing the management of its business and affairs. Clause 75(2) sets out a detailed list of duties that may *not* be delegated by the board.

Clause 76 requires the board to elect a chairperson from among the members of the board for a term not exceeding two years. The chairperson's term may be renewed more than once.

The board and each of its committees must keep minutes of meetings (clause 77). Clause 78 requires the board to meet as often as necessary, but at least four times a year. The board must also meet at the request of a majority of directors or if the selecting bodies request a meeting under clause 84. A majority of the directors of the board constitutes a quorum (clause 79).

The chief executive officer is entitled to attend meetings of the board except in specified cases where the board may exclude him or her (clause 80).

Subject to specified exceptions, directors may participate in meetings of the board (or one of its committees) by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting (clause 81).

According to clause 82, a resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of the board (or a committee of the board) is as valid as if it had been passed at a meeting of the board (or committee). The resolution must be kept with the minutes of the meetings of the board (or committee).

A director may dissent to any resolution passed or action taken at a meeting of the board (or committee) only if the director follows the procedure set out in clause 83.

Clause 84(1) requires the board, at the request of at least four selecting bodies (at least one of which is a municipality or a regional authority referred to in clause 63(4) and at least one of which is a non-governmental entity referred to in clause 63(5)), to hold a special meeting to discuss any issue raised, and invite all the selecting parties to attend. Two-thirds of all directors, including the chairperson, constitute a quorum for the special meeting (clause 84(2)).

5. Committees of the Board

The board *must* establish a governance committee and an audit committee and *may* establish any other committees that it considers necessary to fulfil its duties (clause 85).

Clause 86(1) provides that the *governance committee* consists of a number of directors that is less than a majority of the directors of the board fixed under clause 60 but not less than three. Clause 86(2) sets out the powers, duties and functions of the governance committee. The chairperson may call a meeting of the committee at any time but must call the meeting at the request of a member (clause 86(3)). The committee may meet as often as required and the members must meet in person at least four times a year (clause 86(4)).

Similarly, the *audit committee* consists of a number of directors that is less than a majority of the directors of the board fixed under clause 60 but not less than three (clause 87(1)). The members of the audit committee must have experience and knowledge related to finance and accounting, and at least one must be a member in good standing of an institute or association of accountants incorporated under provincial legislation (clause 87(2)). The chairperson of the board of the airport authority may not be the chairperson of the audit committee (clause 87(3)). The powers, duties and functions of the audit committee are set out in clause 88.

The chairperson of the audit committee may call a meeting of the committee at any time but must call a meeting at the request of the auditor *or* a member of the committee (clause 89(1)). As in the case of the governance committee, the committee may meet as often as required but the members of the committee must meet in person at least four times a year (clause 89(2)). Clause 89(3) requires the committee to invite the auditor appointed under clause 90 to all of its meetings and to give the auditor a copy of every resolution proposed for signature by the members of the committee under clause 82. The auditor must attend any committee meeting held during his or her term of office if so requested by a committee member (clause 89(4)). An auditor attending a committee meeting is entitled to be heard and to have his or her expenses paid by the airport authority (clause 89(5)).

6. Auditor

Clause 90(1) requires the board to appoint an auditor for the airport authority to hold office for a renewable term of one year. Clause 90(2) provides that the auditor may be either an individual or a firm of accountants. It spells out the required qualifications for each.

An individual may not normally hold office as auditor for more than five consecutive years, and a firm of accountants may not hold the office for more than 10 consecutive years (clause 90(3)). A transitional provision provides that a firm of accountants that, on the coming into force of clause 90, has held office as auditor for 10 consecutive years or more may continue to hold office until the end of the second calendar year after that coming into force (clause 90(4)). An individual may not be reappointed as auditor until the expiry of three years after ceasing to hold office, whereas a firm of accountants may not be reappointed until the expiry of five years after ceasing to hold office (clause 90(5)). The board must immediately fill a vacancy in the office of auditor (clause 90(6)).

7. Conflict of Interest Rules

Every airport authority must adopt in its by-laws rules, including conflict of interest rules, governing the conduct of its directors and officers (clause 91). Certain requirements are spelled out regarding the conflict of interest rules (clause 92).

Clause 93 requires a director or officer of an airport authority to disclose to the authority, in a specified manner, any interest he or she has in a transaction with the authority. The airport authority must adopt by-laws regarding this matter.

The conflict of interest rules must prohibit directors and officers of an airport authority and related persons from accepting cash (or the equivalent) or a gift from any person attempting to develop a relationship with the authority, or from offering cash or a gift to any such person (clause 94(1)). There is an exception in that the above does not apply to a gift that is not of sufficient value to be construed as improper and the acceptance of which is in accordance with customary business practice (clause 94(2)). For purposes of the above, a gift includes any good, service, benefit, hospitality or promise of a favour (clause 94(3)).

Within the first 30 days after the adoption of the conflict of interest rules, and within the first 30 days after the beginning of each fiscal year, the directors and officers must provide a written declaration to the board acknowledging that they have read the rules and that, to the best of their knowledge, they are in compliance with them (clause 95(1), (3)). A similar requirement applies to individuals prior to taking office as a director or officer (clause 95(2)).

8. Bid Solicitation

In the case of contracts involving expenditures in excess of $100,000 (or such higher limit prescribed by the Governor in Council, by order) that were not awarded under a public bid solicitation process, an airport authority must disclose the name of the contracting party, the purpose and value of the contract and the reasons why a public bid solicitation process was not followed (clause 96(1), (3)). An airport authority must not engage in contract splitting to avoid the application of the above provision (clause 96(2)).

9. Consultation

Pursuant to clause 97(1), each airport authority must invite the air carriers operating at the airport to meet with it at least once a year. Each air carrier may be represented by a maximum of three directors and officers, and the airport authority must be represented by its chief executive officer, one other officer and the chairperson or, in the event the latter cannot attend, a director. The meetings are a forum for directors and officers of the air authority and of air carriers to discuss strategic issues related to the airport (clause 97(2)).

Clause 98 requires the by-laws of the airport authority to provide for mechanisms for the authority to consult "its community," which includes passengers, persons living or carrying on business near the airport, and persons, other than air carriers, having a business relationship with the authority. Those mechanisms must include a discussion forum concerning matters related to the airport, as provided for in clause 99.

E. Part 4 – Obligations of Airport Authorities (clauses 100-118)

1. Application of Part 4 and Names of Airports

Clause 100 states that Part 4 applies to all airport authorities. It applies only in respect of an airport leased to an airport authority by the federal Crown on the transfer date (as defined in clause 2).

Clause 101 prohibits an airport authority from changing the name of an airport without the written consent of the Minister. However, the Governor in Council may direct an airport authority, by order, to change the name of any airport.

2. Land Use

Every airport authority must have a land use plan, have it approved by the Minister and carry out its airport undertaking in accordance with it (clause 102). The requisite contents of the plan are listed in clause 103(1). The Governor in Council may make regulations respecting the contents of airport land use plans (clause 103(3)).

Clause 104(1) authorizes an airport authority, at any time, to submit an amended land use plan to the Minister for approval. Prior to doing so, the airport authority must consult with stakeholders (clause 104(2)). The airport authority must submit with the amended land use plan a summary of any representations made during the consultations, a resolution of the board approving the amended land use plan, and a summary of its implications for the business plan and the master plan (clause 104(3)). The Minister's decision on whether or not to approve the amended land use plan is final and may not be reviewed in any court (clause 104(4)). If the Minister does not refuse to approve a proposed amended land use plan within 120 days after receiving it and the other information required to be submitted by virtue of clause 104(3), the Minister is deemed to have approved it (clause 104(5)).

An airport authority must consult with the appropriate municipal, regional and provincial authorities in respect of existing or proposed land uses in the vicinity of its airports to promote land uses that are compatible with the safe operation of airports and aircraft (clause 105).

3. Airport Master Plan

Each airport authority must have a master plan and carry out its airport undertaking in accordance with it (clause 106(1)). The requisite contents of the plan are set out in clause 106(2). The Governor in Council may make regulations regarding the contents (clause 106(3)).

Every airport authority must submit its master plan to the Minister within one year after the coming into force of clause 106 or, in the case of a new airport authority, after its name is added to Part 1 of Schedule 1 (clause 106(4)). The airport authority must update its master plan and submit the updated plan to the Minister for review a) every 10 years after the transfer date; b) whenever, in the opinion of the authority, an update is necessary; and c) whenever, in the Minister's opinion, the master plan is not consistent with the approved land use plan (clause 106(5)).

In preparing or updating the master plan, the airport authority must consult with stakeholders (clause 106(6)). The airport authority must submit with its master plan or updated master plan a summary of the representations made during the consultations and a resolution of the board approving the master plan or updated master plan (clause 106(7)).

Clause 107(1) permits the Minister to review the master plan or updated master plan to determine whether it is consistent with the airport authority's approved land use plan. If the Minister determines it is not consistent with the approved land use plan, the Minister may identify any inconsistencies and direct the airport authority to eliminate them (clause 107(2)). According to clause 107(3), the Minister may not issue such a direction after the expiry of 120 days after receiving the master plan or updated master plan and the documents referred to in clause 106(7).

4. Environment

Every airport authority must, after consulting air carriers and tenants at the airport, adopt an environmental management plan within one year after the coming into force of clause 108 or, in the case of a new airport authority, after its name is added to Part 1 of Schedule 1 (clause 108(1)). A copy must be submitted to the Minister, without delay, along with any related information or documents that the Minister may require (clause 108(2)). The plan must be updated every three years and a copy of the updated plan must be submitted to the Minister (clause 108(3)). The plan must contain a description of environmental management at the airport, including management of the matters enumerated in clause 108(4). The Governor in Council may make regulations respecting the contents of the environmental management plan (clause 108(5)).

Every airport authority must ensure that storage tanks installed at the airport meet the standards set out in the environmental guidelines referred to in clause 109(1). The airport authority must send the Minster a certificate from an independent, qualified person, in respect of every storage tank installed, certifying that the authority has met its obligation in the above regard (clause 109(2)).

Every airport authority must, without delay, give written notice to the Minister of a spill or release of a substance into the environment, in a quantity or concentration or under conditions that: a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity; b) constitute or may constitute a danger to an

environment on which life depends; or c) constitute or may constitute a danger to human life or health (clause 110(1)). In addition, the airport authority must give notice to the Minister of the measures it is taking to stop the spill or release of the substance and to mitigate damage to the environment (clause 110(2)). Clause 110(3) provides that the normal operation of aircraft or motor vehicles at the airport does not, in itself, constitute the release of a substance referred to in clause 110(1). Clause 110(4) requires the airport authority to keep a record of the spill or release, the clean-up or remedial work performed and any follow-up or monitoring undertaken. It also requires that a copy of the record be sent to the Minister on request.

Clause 111 enables the Governor in Council, by regulation, to take any measures that are necessary to ensure that the condition of any airport does not endanger the environment.

5. Construction and Fire Prevention Standards

Every airport authority must ensure that all airport buildings are constructed in compliance with specified building and fire prevention and suppression standards (clause 112(1)). An airport authority must provide to the Minister on request, in relation to every building constructed at the airport, a certificate from an independent, qualified person certifying that the construction meets the above standards (clause 112(2)).

Every airport authority must ensure that all buildings at the airport are operated in accordance with specified fire prevention and fire suppression standards (clause 113(1), (2)). The airport authority must submit to the Minister, within three years after the coming into force of clause 113, a certificate stating that all buildings at the airport are operated in accordance with the specified standards (clause 113(3)).

6. Acquiring Land

If an airport authority acquires an interest in land (or, in the province of Quebec, a right relating to an immovable) required for the operation or expansion of a facility, air terminal building or road network referred to in paragraph (a) of the definition of “essential activities” in clause 2, the airport authority must acquire it in its own name or, with the Minister’s approval, in the name of the federal Crown (clause 114(1)). The Minister may require the airport authority to transfer the interest in land to the federal Crown on such terms as the Minister may specify, for a nominal amount free of all charges or security or other restrictions against the land (clause 114(2)). The airport authority may not transfer an interest in land to any person without the Minister’s

approval (clause 114(3)). As well, certain other requirements regarding land acquisition by an airport authority are spelled out in clause 114.

Under the circumstances set out in clause 115, the Minister may, at the request of an airport authority, request the appropriate Minister in relation to Part 1 of the *Expropriation Act* to expropriate an interest in land (or, in Quebec, a right relating to an immovable).

7. Other Obligations

Every airport authority must prominently display the Canadian flag and erect signs in certain places at the airport proclaiming that the airport is owned by the Government of Canada (clause 116(1)). The Governor in Council may make regulations regarding the above matters as well as the contents of the signs (clause 116(2)).

Certain obligations under the *Official Languages Act* apply to airport authorities in relation to their airports as if the authorities were federal institutions and the airports were offices or facilities of those institutions (clause 117).

The Governor in Council may, by order, take any measures that are necessary for the transfer of property and the carrying out of airport operations on the termination or expiry of a lease entered into between an airport authority and the federal Crown on the transfer date (clause 118).

F. Part 5 – Disclosure and Accountability (clauses 119-141)

1. Application

Part 5 of the bill applies to all airport authorities as well as to certain other airport operators referred to in clause 119.

Each airport operator referred to in clause 119(3) must prepare financial statements in respect of its airports annually (clause 120(1)). The annual reports of those airport operators must contain a summary of consultations with air carriers and the community, and a list of other documents respecting the airport that are available to the public and the places where they may be obtained (clause 120(2)).

Airports owned by the governments of Yukon, the Northwest Territories, and Nunavut in Whitehorse, Yellowknife and Iqaluit, respectively, must prepare an annual report including the components set out in clause 121.

Each airport operator referred to in clause 122 must hold an annual meeting to which the public is invited, respecting the carrying out of its airport undertakings. The airport operator must present its annual report at the meeting and give members of the public an opportunity to express their views and ask questions.

2. Business Plan

Every airport authority must, before the beginning of its fiscal year, adopt a business plan for its airports for the upcoming five fiscal years (clause 123(1)). The airport authority must consult with air carriers operating at the airport on the factors to be taken into account in developing its business plan, including traffic forecasts (clause 123(2)). The requisite contents of the business plan are set out in clause 123(3).

3. Financial Statements

Every airport authority must prepare quarterly and annual financial statements that meet the requirements set out in clause 124. The same clause permits the Governor in Council to make regulations respecting the information that is to be included in those financial statements.

An airport authority must not publish or circulate copies of the annual financial statements unless those statements are approved by its board of directors and accompanied by the auditor's report (clause 125).

4. Auditor's Report

The auditor of an airport authority must audit the annual financial statements of the authority and submit a report to it for the fiscal year for which the auditor has been appointed as soon as possible after the end of that fiscal year (clause 126). The auditor must also prepare and submit to the board supplementary reports containing the information set out in clause 127(1). An airport authority must send a copy of those reports to the Minister within 30 days after receiving them (clause 127(2)).

The present or former directors, officers, employees, etc., of the airport authority must provide the auditor, on request, with information and access to records, documents, etc., that they are reasonably able to provide and that are, in the opinion of the auditor, necessary to enable the auditor to exercise his or her powers, duties and functions (clause 128(1)). At the

request of the auditor, the directors of the airport authority must obtain from the present or former directors, officers, employees, etc., of any corporation in which the airport authority holds an ownership interest, information and explanations that they are reasonably able to provide and that, in the opinion of the auditor, are necessary to enable the auditor to exercise his or her powers, duties and functions. The directors must provide the auditor with such information and explanations (clause 128(2)).

5. Annual Report

Every airport authority must prepare an annual report comprising the components set out in clause 129. The Governor in Council may make regulations concerning the contents of the annual reports (clause 130).

6. Annual Meeting and Meetings With Selecting Bodies

Every airport authority must hold an annual meeting that complies with the requirements set out in clauses 131 and 132. As well, every airport authority must invite the selecting bodies to meet at least once a year with a majority of the directors of the board, including the chairperson and the chief executive officer (clause 133(1)). Meetings with the selecting bodies may not deal with the confidential affairs of the airport authority (clause 133(2)).

7. Public Access to Documents

Every airport authority must make available the documents referred to in clause 134 to any person at its head office, during usual business hours and, on payment of a reasonable fee, provide a copy of the documents to them. The authority must list the documents on its Internet site, if it has one (clause 134).

8. Survey, Performance Indicators, and Performance Reviews

Every airport authority must, in the year preceding the performance review referred to in clause 138, conduct a survey at the airport leased to it by the federal Crown, regarding the degree of satisfaction of passengers with the services provided by the authority (clause 135).

Every airport authority must, within one year after the coming into force of clause 136, establish performance indicators applicable to its activities (clause 136). The Governor in Council may make regulations establishing performance applicable to the activities of airport authorities (clause 137).

Clause 138(1) requires the board of an airport authority to cause a review to be undertaken in respect of the business and affairs of the airport authority within six months after the date that is every fifth year after the transfer date. A report of the review must be sent to the board before the end of the six-month period and must be made available to each selecting body and the public within 30 days after it is received by the board. The board must choose a reviewer through a public bid solicitation process and it may not choose the individuals or firms described in clause 138(2). Clause 138(3) sets out the required qualifications for the reviewer and clause 139(1) sets out the requisite contents of the reviewer's report. The Governor in Council may make regulations regarding the contents of the report (clause 139(2)).

Clause 140 requires the airport authority to send a copy of its response to the reviewer's conclusions to each selecting body and the reviewer within 120 days after the expiry of the six-month period referred to in clause 138(1). The airport authority must also make a copy of the response available to the public within that period.

Clause 141 provides that if at least four selecting bodies (at least one of which must be a municipality or regional authority referred to in clause 63(4) and at least one of which must be a non-governmental entity referred to in clause 63(5)) request a meeting within 30 days after the airport authority has sent them its response to the reviewer's report, the board must invite all selecting bodies and the reviewer to a meeting to discuss any matter in the report raised by a selecting body, and any measures to be taken by the authority to implement the recommendations of the report, or the reasons why no such measures may be taken. The meeting must be held within 21 days after the request of the selecting bodies is made.

G. Part 6 – Airport Fees (clauses 142-182)

1. Application

Clause 142(1) specifies that Part 6 of the bill (pertaining to fees) applies to airport authorities and airport operators referred to in paragraphs (c) and (d) of the definition of "airport operator" in clause 2(1). In the case of airport authorities, it applies only in respect of airports

leased to them by the federal Crown on the transfer date. Subject to clause 142(3), Part 6 does not apply to the governments of the Yukon, the Northwest Territories and Nunavut, as airport operators in respect of the airports they own in Whitehorse, Yellowknife and Iqaluit respectively (clause 142(2)). Those airport operators must, if they establish or increase a fee, comply with the requirements set out in clause 142(3).

2. Imposition of Fees

Clause 143(1) provides that an airport operator may impose only the following fees: a) a fee that was in existence immediately before the coming into force of this clause; and b) a fee that has been established or revised after the coming into force of this clause in accordance with Part 6. No person who provides airside and terminal facilities and services on behalf of an airport operator may impose fees (clause 143(2)).

3. Charging Principles and Establishment and Revision of Fees

Airport operators must observe the principles set out in clause 144(1) when establishing or revising a "fee." A "fee" is defined in clause 2 for purposes of the Act to mean an aeronautical fee or a passenger fee or both. An "aeronautical fee" means a charge imposed on air carriers or other operators of an aircraft for their use of airside and terminal facilities and services. A "passenger fee" is defined to mean a charge imposed on passengers for their use of airside and terminal facilities and services.

Airport operators must establish their methodology (and any revisions to it) for determining fees in accordance with Part 6 (clause 145(1)). The requisite contents of the methodology are set out in clause 145(2). In the case of a passenger fee used for a major capital program, infrastructure covered by an agreement referred to in clause 50(2)(c), or a program designated under clause 176, the methodology must explain the matters set out in clause 145(3). The airport operator must explain the policies and principles used for determining charges that it imposes on air carriers other than fees (clause 145(4)).

Clause 146(1) requires airport operators to give notice of any proposal to establish or revise their methodology for determining fees. The requisite contents of the notice are set out in clause 146(2).

The airport operator must, after following the procedures noted in clause 147(1), announce its decision on the methodology for determining fees. The requisite contents of the announcement are set out in clause 147(2).

Airport operators must give notice of any proposal to establish or increase a fee (clause 148(1)). The requisite contents of the notice of the proposal are set out in clause 148(6). A notice of a proposal in respect of a *passenger* fee must include the additional elements set out in clause 148(7).

Clause 149(1) requires the airport authority, after complying with the requirements set out in that provision, to announce its decision in respect of its proposal to establish or increase a fee. The requisite contents of the announcement are set out in clause 149(2). Clause 149(3) requires an announcement in respect of a decision regarding a *passenger* fee to contain *also* the information required under clause 148(7). Clause 149(4) states that the announcement may not be made before the closing date for representations referred to in clause 148(6)(d). The airport operator must announce a reduction in a fee (clause 149(5)).

4. Procedure for Notices and Announcements

Clause 150 generally sets out the procedure concerning notices required to be given and announcements made under specified clauses of the bill.

5. Consultations and Representations

Clause 151 makes provision for public meetings to be held and representations to be made regarding airport operators' proposals to establish or revise their methodology for determining fees.

6. Effective Date of Fees

Clause 152 sets out information regarding the date on which an airport operator may bring an aeronautical or passenger fee into effect. It also spells out the notice requirement in that regard.

7. Appeals

Clauses 153 to 164 set out detailed rules respecting appeals to the Canadian Transportation Agency concerning new or increased aeronautical or passenger fees. A decision of the Agency on an appeal regarding fees is final (clause 163).

8. Additional Provisions Regarding Passenger Fees

Clauses 165 to 170 and 176 to 180 apply specifically to passenger fees, and set out a number of additional provisions pertaining to them.

9. Bringing Existing Fees Into Compliance

Prior to the date specified in clause 171, every airport operator must ensure that all its fees are in compliance with the charging principles (clause 171). The airport operator must make an announcement in that regard (clause 172).

An appeal of a fee set out in the announcement may be made to the Canadian Transportation Agency on the ground that the fee is not in compliance with the charging principles (clause 174(1)). The Agency may either dismiss the appeal or declare that the fee is not in compliance with the charging principles (clause 174(2)). If the Agency declares that a fee is not in compliance with the charging principles, the airport operator must, within 30 days after the declaration, give notice under clause 148 of a proposal to revise the fee or announce that the fee will be reduced (clause 174(3)). Clause 175 sets out the specific cases in which a fee is deemed not to be in compliance with the charging principles.

10. Seizure and Detention of Aircraft

If a fee has not been paid, the airport operator, in addition to other available remedies, may obtain a court order authorizing the operator to seize and detain aircraft (clause 181). Certain aircraft, including any specified by the Governor in Council in regulation, are exempt from seizure and detention under the above clause (clause 182).

H. Part 7 – Compliance and Enforcement (clauses 183-210)

1. Inspection

Clause 183 authorizes the Minister to designate, as an inspector for the administration of the bill, any person or class of persons that the Minister considers qualified. The Minister must give each inspector a designation document specifying the terms and conditions of the designation.

Clause 184(1) enumerates the powers of inspectors for the purpose of administering the bill. Clause 184(2) authorizes inspectors to have access to computers in order to examine data contained in the computer and to reproduce any record from the data for examination.

Upon request, an inspector must show his or her designation document when exercising powers under the bill (clause 185).

It is incumbent upon the person in charge of the place entered by the inspector to provide reasonable assistance to enable the inspector to carry out his or her duties under the bill (clause 186).

2. Offences and Punishment

Clause 187 prohibits a person from knowingly making or providing false or misleading statements or information, either orally or in writing, to the Minister, a slot coordinator or any person acting on behalf of the Minister in connection with any matter under the bill. Clause 188 prohibits a person from knowingly obstructing or hindering, or making a false or misleading statement, either orally or in writing, to an inspector engaged in carrying out his or her duties under the bill. Clause 189 prohibits a person from knowingly making or assisting another person in making a required document that contains an untrue statement of material fact, or omits to state a material fact so that the document becomes misleading.

A contravention of clauses 187, 188 or 189, or of an order of the Governor in Council under clause 14 to protect critical airport infrastructure, constitutes a summary conviction offence for which, in the case of an individual, the punishment is a fine of not more than $50,000 or, in the case of a corporation or an airport operator, a fine of not more than $250,000 (clause 190).

Contravention of an order of the Governor in Council (other than one in respect of critical airport infrastructure), a direction of the Minister, an order of the Agency in relation to the setting of fees, or any other provision of the Act or regulations (other than clauses 187 to 189) constitutes a summary conviction offence for which the punishment is, in the case of an individual, a fine of not more than $10,000 and, in the case of a corporation or an airport operator, a fine of not more than $100,000 (clause 191).

An offence under clauses 190 or 191 that is committed or continued on more than one day is considered as a separate offence for each day (clause 192).

Directors or officers of a corporation that committed an offence under the bill are guilty of the same offence unless the act or omission constituting the offence took place without their knowledge or consent or they exercised due diligence to prevent the offence from occurring (clause 193).

3. Administrative Monetary Penalties

Clause 194(1) empowers the Governor in Council to make regulations that establish an administrative monetary penalty scheme (AMPS) and to designate contraventions that may be proceeded with as violations subject to administrative monetary penalties. The maximum penalty if a contravention is proceeded with under the AMPS is $5,000 in the case of an individual and $50,000 in the case of a corporation or airport operator (clause 194(2)). A violation that is committed or continued on more than one day is considered a separate violation each day (clause 194(3)).

Clause 195 sets out the criteria to be taken into account in each case in determining the amount of the penalty.

Clause 196 establishes the dual track. A contravention of a direction, order, provision, etc., designated by regulations under clause 194(1) may be proceeded with either under the AMPS or as a summary conviction offence. Clause 197(1) provides that if a violation is proceeded with under the AMPS, the person who commits the offence is liable to a penalty determined in accordance with the regulations establishing the AMPS (pursuant to clause 194) or the criteria set out in clause 195. An inspector who believes that a violation has been committed must serve notice of violation to the person alleged to have committed the violation (clause 197(2)). Clause 197(3) sets out the requisite contents of the notice of violation. The inspector must provide a copy of the notice of violation and proof of service of it to the Transportation Appeal Tribunal of Canada (clause 197(4)).

If the person pays the penalty specified in the notice of violation, the person is deemed to have committed the violation and proceedings in respect of it are ended (clause 198). A person who neither pays the penalty nor files a request for review is deemed to have committed the violation (clause 199(1)). Where a person neither pays the penalty nor requests a review, the Tribunal must issue a certificate to the Minister indicating the amount of the penalty (clause 199(2)). That certificate is needed as evidence of a debt due to the Crown.

A person who objects to the facts alleged in the notice of violation or the amount of the penalty must request in writing a review of the violation notice by the Tribunal within 30 days after having received the notice, unless the Tribunal, on application, allows for an extension of time (clause 200(1)). The Tribunal must appoint a date, time and place for the review and must inform the inspector and the person who filed the request for review (clause 200(2)). Both the inspector and the person who requested the review have the right to make representations and present evidence (clause 200(3)). The inspector must establish, on a balance of probabilities, that the person named in the violation notice committed the violation (clause 200(4)). The Tribunal member assigned to conduct the review may confirm the inspector's decision or substitute his or her own decision (clause 200(5)).

The Tribunal must inform the person named in the violation notice and the Minister of its decision as well as the right to appeal that decision to the appeal panel of the Tribunal (clause 201). A person who has received the Tribunal's notice of its decision may, within 30 days after being served, appeal that decision to the appeal panel of the Tribunal (clause 202(1)). No appeal is permitted if the person named in the violation notice did not appear at the review hearing, unless there is a reasonable justification for their absence (clause 202(2)). The appeal panel of the Tribunal may either dismiss the appeal, or allow it, in which case it may substitute its determination for the determination appealed against (clause 202(3)). Where the appeal panel finds that a person has committed a violation, the panel must without delay inform the person of the finding and the amount to be paid (clause 202(4)).

Clause 203 provides that a violation is not considered to be an offence. Accordingly, section 126 of the *Criminal Code* (concerning an offence for disobeying a statute) does not apply. The defence of due diligence is available when a contravention is proceeded with under the AMPS (clause 204). The Minister may publicize any violation, the name of the person who committed it and the penalty imposed (clause 205).

Penalties resulting from the AMPS constitute debts due to the federal Crown and may be recovered as any other debt in a court of competent jurisdiction (clause 206(1)). Debt recovery proceedings cannot be commenced any later than two years after the debt became payable (clause 206(2)). Penalties resulting from the AMPS are payable to the Receiver General (clause 206(3)).

The Minister may certify any unpaid amount of a penalty resulting from the AMPS (clause 207(1)).

The Minister's certificate certifying the amount of any unpaid penalty resulting from the AMPS, once registered in a court of competent jurisdiction, has the same effect as a judgment of that court for the amount specified in the certificate and related registration costs (clause 207(2)). The reason for this provision is that a court order may be needed to enforce collection of the penalty.

No proceeding in respect of a violation or a prosecution for an offence may be commenced later than two years after the subject matter became known to the inspector (clause 209(1)). A document appearing to have been issued by an inspector, certifying the day on which the subject matter of the proceeding became known to the inspector, is admissible in evidence without proof of the signature and in the absence of evidence to the contrary (clause 209(2)).

In the event of non-compliance with any provision of the bill, the regulations, or the airport operator's by-laws, the Minister may, in addition to any other right he or she has, apply to the court for an order directing the relevant person to comply with that provision, or restraining the person from being in breach thereof; on such application, the court may so order and make any further order it thinks fit (clause 210).

I. Part 8 – Related and Coordinating Amendments and Coming Into Force (clauses 211-215)

Clauses 211 to 214 make several related and coordinating amendments to other Acts. Clause 215 provides for the coming into force of provisions of the bill (other than a coordinating amendment referred to in clause 214) on a day or days to be fixed by order of the Governor in Council.

COMMENTARY

A number of comments concerning the bill have appeared in the press. For example, an article entitled "Airports bill flies into a storm; Legislation draws criticism from both sides; Collenette says transparency, changes needed" appeared in the *Toronto Star* on 21 March 2003, the day after Bill C-27, the proposed Canada Airports Act, was introduced in the House of Commons. In the article, the Canadian Airports Council, representing the 30 Canadian airports that the bill is intended to govern, stated that the bill, if enacted into law, "will drive up

administrative costs – especially at smaller facilities – and hamper the ability of community-based airport authorities to make money at the worst possible time in the history of civil aviation."

According to the same article, airlines have complained that the proposed Act does not give them a real say in how airports collect and spend money, much of it from passengers; and the appeal process, in their view, is not good enough to deal with protests over landing fees or other increases to air carriers.

On the same date, an article entitled "Airport Act could hit flyers in pocketbook" appeared in the *Saint John Telegraph-Journal*. In the article, Rob Robichaud, President and CEO of the Greater Moncton Airport Authority, warned that the proposed legislation, if enacted, "is going to be a tremendous, tremendous strain on smaller airports in terms of financial and administrative costs … It quite possibly could mean we will have to hire extra staff, and it's going to take an awful lot more time to do things administratively … These costs are going to have to be transferred to our customers, and that's unfortunate if that is the case."

The article noted that the Transport Minister, the Hon. David Collenette, acknowledged that the bill could mean more red tape for airport operators, but he also argued that it would bring "greater transparency and accountability" to the way Canada's airports are run. Mr. Collenette added that the airline industry may also complain that the bill does not go far enough in helping to justify, for example, how airport improvement charges and other fees are set. "By and large we've had very few problems to date," Mr. Collenette is quoted as saying, "but this will ensure as we go forward that there is a more rigorous application of accountability … We worked with (airport operators) to try to deal with some of the issues."

Mr. Robichaud countered that more legislation is not the answer for increased accountability, adding that the original ground leases under which federal airports were transferred to local authorities should be sufficient. "There are many mechanisms in there that allow for transparency," Mr. Robichaud said. "I do not believe there is a need to increase that."

Similar criticisms made by officials from a number of other airport authorities across Canada have also appeared in newspapers.