



*Ultralight Pilots
Association of Canada*

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Submission to the Standing Committee on Finance by Kathryn Lubitz, UPAC President

**A Brief regarding Bill C-43 Part 4 Division 2 Sections 143, 144 - Amendments
to the Aeronautics Act**

We offer this brief on behalf of pilots in every Canadian province and territory who own and fly over 7,000¹ ultralight and light aeroplanes principally from unimproved, rural aerodromes.

The amendments as written gives the Minister the power to prohibit aeronautics based on opinion with no public discussion or accountability. Nor is there any recourse or appeal mechanism for an aerodrome owner or operator affected by such a prohibition.

There are already ongoing consultations between Transport Canada and representatives from the aviation industry on aerodrome development including proposed changes to the Aeronautics Act. Those consultations should be allowed to reach their conclusions before these changes to the Aeronautics Act proceed.

It is our position that Part 4 Division 2 Amendments to the Aeronautics Act 143 4.31(1) and 4.31(2) and 144 4.9 k.1 and k.2 are premature and incomplete and should be withdrawn at this time.

Background

There are three kinds of aerodromes in Canada; unregistered, registered and certified. In December 2010, Transport Canada estimated that there were over 6,000² aerodromes in the country. It was estimated that 1,200² of these aerodromes were registered. To register an aerodrome, the aerodrome owner/operator sends Transport Canada the aerodrome information which is then published and made available as an aid to pilots all across Canada.

It was also estimated that approximately 600² of the aerodromes were certified as airports. Certification is required where the aerodrome is located within the built up area of a city, where it is used for a scheduled service for the transport of passengers, or where the Minister is of the opinion that meeting airport certification requirements would be in the public interest and would further the safe operation of the aerodrome. (Reference CAR 302.01)

Only 10% of Canadian aerodromes are certified as airports leaving 90% of the nation's uncertified aerodromes operating safely without intervention from Transport Canada.

Question of Necessity

There is a question about the necessity of these fundamental changes to powers of the Minister in the Aeronautics Act.

Court challenges by neighbours or local jurisdictions to an aerodrome's operations are infrequent. In most cases, exclusive federal jurisdiction of aeronautics has been upheld. These court challenges receive press coverage just because they are rare. A review of court challenges as reported in the press in last few years reveals that there were three very public disputes over aerodrome development (Parkland AB, Neauville QC, and Burlington ON). Concerns have also been expressed about another nine private aerodromes³ located in the Oil Sands area north of Fort McMurray, AB. This is a total of 12 instances where the Minister might have gotten involved. This represents an insignificant 0.2% of the total number of Canadian aerodromes.

This is further evidence that the vast majority of Canadian aerodromes are operating safely in cooperation with their neighbours without any intervention from Transport Canada.

The proposed amendment to the Aeronautics Act 4.31 (1) gives the minister the authority to issue an order to stop the development of an aerodrome based solely on opinion. Further, the proposed amendment 4.31(2) allows this to be done without scrutiny or consultation, and requires no justification by the Minister when there is a conflict between a landowner's right to use their land in the lawful pursuit of aviation and their neighbors who may have just decided that they do not like it.

Granting the Minister prohibition power over aerodromes as described in the amendment based only on his/her discretion and opinion is a contradiction of the Aeronautics Act 4.2, which states that the Minister is responsible for the *development* and regulation of Aeronautics and 4.2 (a) *promote* aeronautics..."

Public Interest

The 2012 Cabinet Directive on Regulatory Management states that "When regulating, the government will... 1. Protect and advance the public interest in health, safety, and security, the quality of the environment and the social and economic well being of Canadians. It

is unclear where public interest concerning aerodromes fits in the above list.

There are no parameters on what the public interest might include and we worry that only the loudest and best funded interest will be heard as the "public interest".

There is a national public interest for a viable aviation network across the country. Canada has a rich aviation heritage driven by geography where aerodromes and public airports are definitely in the public interest. Public interest is obvious in parts of Canada which are served exclusively by aviation. In other parts of Canada, the benefits of aeronautical activity may not be as clear, but they are no less important.

Rather than fostering a spirit of cooperation and consensus, the new powers granted to the Minister in these amendments will create conflict and confusion where there are competing public interests. The Minister could use his/her discretion to favour a disgruntled neighbour and issue an order to stop a landowner from using his land in the lawful pursuit of private aviation even when safety is not an issue and public interest is the interest of a single individual.

Included in the Aeronautics Act are recourse and appeal options for issues related to Canadian Aviation documents. No such recourse or appeal process for aerodrome orders issued by the Minister is included with these amendments making this a very one-sided and unfair amendment.

An appeal process for a landowner who has been ordered by the Minister to stop development of an aerodrome should be part of these amendments.

The Power to Prohibit Aeronautics

Mrs. Shari Currie, Director, Policy and Regulatory Services, in her testimony at the Nov 5 meeting of Standing Committee on Finance⁴ stated that the Minister does not approve aerodromes and currently does not have the authority to intervene to stop aerodrome development. Mrs. Currie also confirmed that these new powers of intervention will apply to all aerodromes from grass farm strips to Class 1 International airports and everything in between.

This amendment will give the Minister the authority to intervene to prohibit any aerodrome development. The Minister should be asking for the authority to intervene to protect aerodromes and aeronautical activities as that is part of the mandate.

We see a parallel to farmers who have had complaints lodged against them by new neighbours who didn't realize they'd moved into a rural area with noises, smells, dust and dirt that is modern farming. This has resulted in provincial Right to Farm legislation protecting normal farming activities. Rural aerodromes are a part of life in rural Canada and they should be protected and encouraged, not prohibited.

Current Consultation

There is ongoing consultation by Transport Canada with engaged stakeholders from the aviation community on regulatory initiatives dealing with aerodrome development. The Preliminary Issue & Consultation Assessment (PICA) Form (DIMS #8970782) consultation process led to a Focus Group which is working on these issues. The consultation process was triggered by what Transport Canada calls recent ‘complex aerodrome challenges pertaining to the construction and operation of certified and non-certified aerodromes...’⁵

These consultations began in early 2014 followed by a Focus Group meeting in June, 2014. Included in the discussions are proposed changes to the Aeronautics Act, specifically to the definition of an aerodrome.

Also included in the Focus Group discussions are putting parameters around the terms ‘development’ and ‘public interest’ in the context of the Aeronautics Act and the proposed regulatory requirements. Until these terms are defined, it is premature to give the Minister the extraordinary powers that allow prohibition of aeronautical activity based on his/her discretion or opinion.

Draft regulations were expected this fall. Following release of the draft regulations, discussions would turn to the aeronautics act changes and regulations governing the complaint process. As of this date, stakeholders are still waiting for the draft regulatory amendments.

At no time were these changes to the Aeronautics Act that are in bill C-43 included in any of the discussions.

One outcome of the Group’s efforts will be a suggested framework under which aerodrome complaints will be handled by Transport Canada staff. Every complaint will have to be examined to determine if there is a compelling safety or public interest concern.

If a complaint is persuasive, Transport Canada will be able to intervene to stop an aerodrome. If there is no legitimate issue, Transport Canada will do nothing; the aerodrome development can proceed but without Transport’s approval. Transport will remain silent. That does not, however, preclude legal challenges.

The complaint process will be costly and time consuming for both the aerodrome proponent and for Transport Canada. It will use up resources that the Department says it does not have.

To Summarize

The fact that these particular amendments to the Aeronautics Act were not included in existing and ongoing consultations violates the Cabinet Directive on Regulatory Management #6 which states that “regulation should be accessible, understandable and responsive through engagement, transparency, accountability and public scrutiny.” There

was no advance notice, discussion, or consultation with affected parties prior to the publishing of these amendments in Bill C-43.

While we see the interest of the Government in making constructive changes to the Aeronautics Act as admirable, the proposed amendments are too broad, too open to interpretation and unnecessarily heavy handed in their powers. The issues involved are too complicated to be resolved by these amendments. We further feel that these amendments will negatively influence the work already in progress by the consultation group charged with working on proposed changes to the Aeronautics Act and the regulations affecting aerodromes.

We encourage the committee to remove these amendments to the Aeronautics Act from Bill C-43 and let the stakeholder group already working within Transport Canada's consultation framework complete its work. Good legislation, that will meet the needs of current and future growth in aviation is important to industrial and technological growth in Canada, and should be carefully crafted

Thank you.

References:

1. Aircraft numbers <http://wwwapps2.tc.gc.ca/Saf-Sec-Sur/2/ccarcs/aspscripts/en/monthsumairbycat.asp>
2. Number of Aerodromes in Canada AC-301-002 Aerodrome Registration http://www.tc.gc.ca/media/documents/ca-opssvs/AC_301-002.pdf
3. From <http://www.albertaoilmagazine.com/2014/07/wild-skies-oil-sands-airways/>
"Transport Canada corroborated this information in an email to Alberta Oil: "... in the [Athabasca oil sands] area; one is a certified aerodrome, the Fort McMurray airport. Nine ... aerodromes are private registered aerodromes that serve the oil sands specifically."
July 21, 2014
4. FINA Meeting No 56, Nov 5, 2014
http://parlvu.parl.gc.ca/Parlvu/TimeBandit/PowerBrowser_SilverLight.aspx?ContentEntityId=12243&EssenceFormatID=477&date=20141105&lang=en
5. Preliminary Issue & Consultation Assessment <http://wwwapps.tc.gc.ca/Saf-Sec-Sur/2/npa-apm/actr.aspx?id=7&aType=1&lang=eng>