

Transport minister surprises industry with new powers

By Kevin Psutka, COPA president and CEO

Since my previous update in June on Transport Canada's initiative to amend the Aeronautics Act and Aerodrome regulations to require consultation on any aerodrome development

http://www.copanational.org/Front_Page_Aerodromes.cfm, there has been little progress, or so I thought.

The industry participants had received a draft report of the focus group, for which COPA submitted extensive comments, and we were waiting for finalization of the report as well as release of draft regulations this Fall for further discussion. The documents associated with this effort are here

<http://www.wapps.tc.gc.ca/Saf-Sec-Sur/2/npa-apm/actr.aspx?id=7&aType=1&lang=eng>

As part of Transport Canada's initiative, the schedule included the eventual introduction of an Aeronautics Act amendment on the definition of an aerodrome, with the intent to exclude some types of aerodromes, such as ones that are infrequently used, from being protected by federal jurisdiction.

As you may appreciate, this initiative is a critical one for our sector and indeed for all of aviation, especially considering all of the work COPA has done, including spending hundreds of thousands from your Freedom to Fly Fund over many years to defend the concept of federal jurisdiction and your right to establish and build aviation-related facilities on your land without interference from local authorities.

It has come to my attention that on October 23 an amendment to the Aeronautics Act was introduced to Parliament, contained along with many other unrelated matters in Bill C-43 concerning the budget:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6737565&File=101#2>.

To my knowledge no one in the industry has been consulted on the amendment. It has nothing whatsoever to do with the definition of an aerodrome. Instead, this very broad amendment gives the Minister sweeping powers to prohibit any development at any aerodrome and any change of operations at any aerodrome. It is well beyond what was anticipated during the discussions with industry on the requirement to consult. Furthermore, if the amendment passes into law, the Minister will be able to avoid all consultation processes, such as would be the case when a regulatory change is made, and unilaterally issue an order to prohibit the establishment of any aerodrome, development of any aerodrome and any operational changes at any aerodrome whenever the Minister deems it to be necessary, in the Minister's opinion, for safety or in the public interest.

"In the public interest" is not defined. With no policy to protect and encourage most of aviation and with a flawed National Airports Policy that puts the future of smaller airports and aerodromes in the hands of local interests, the Minister would be free to make a decision on a case by case basis what would be in the public's interest, not necessarily in the best interest of the future of aviation.

I asked Shari Currie, TC Director, Policy and Regulatory Services, who is responsible for this file, how this amendment got to Parliament without consulting stakeholders and here is what she said:

"The proposed Act amendment and the work towards the proposed regulatory amendment are related although not the same. There is more work to do on the regulatory amendment including a focus group at which I trust COPA will participate. Basically, the proposed amendment tightens up the legislative authority to make regulations with respect to responsible aerodrome development. Those requirements will come later, and hopefully with your help, so we can find the right balance."

I responded to Shari as follows:

"Thank you for this clarification. Although not directly related to the NPAs that are in development, the Act amendment relates directly to the fundamental issue that we brought to (Transport Canada's) attention. If the duty to consult is one-sided, whereby aerodrome proponents are required to consult and those who would affect an aerodrome are not, such as residential, wind farm and cell tower proponents, this would be as a minimum very unfair.

"The amendment of the Act to give the Minister power to prohibit development and operation at any aerodrome without similar power to prohibit development or operations near aerodromes that would be detrimental to aviation is also very unfair. So, in that sense the Act amendment is very germane and as a minimum should have been brought to stakeholders' attention before it had progressed this far."

I would like to amplify the point I made to Shari Currie. COPA is not opposed to strengthening the

Minister's ability, if not already available through other means, to prevent abuse of federal jurisdiction when people, for example, flaunt federal jurisdiction in order to use an aerodrome for a land fill operation. However, in the spirit of protecting and promoting aviation, the Minister should also have the ability to step in when activities near an aerodrome, such as residential development, cell towers and wind farms may have a negative impact on an aerodrome, which I believe is very much safety and public interest issues. Proceeding with a one-sided Act amendment to prohibit aviation and one-sided regulatory amendments to require aerodrome proponents to consult is simply unfair.

This rapidly unfolding situation has a very short fuse. Since the Act amendment is already in the hands of Parliament and has already gone through second reading in the House, bypassing all normal consultation processes, the next step is a review by the Finance Committee, which in turn has assigned examination of the Act amendment to the Standing Committee on Transport and Communications (SCOTC).

I have notified the Committee that COPA will submit a brief and I requested an opportunity to appear before the Committee. I have also asked other aviation industry leaders who are involved in the requirement to consult initiative to join COPA in this effort. The goal of the Minister of Transport is to bring the amendment into law before Parliament adjourns for Christmas.

Many readers, especially those who own or want to own an aerodrome, are probably wondering about the future of their investment. It is too soon to provide a firm indication of the full impact of the amendment and the yet-to-be seen regulatory amendments.

If you are trying to decide what you should do with your investment, please read our Guide to Private Aerodromes <http://www.copanational.org/GuidePrivateAerodrome.cfm> and then either wait while all of this unfolds over the next year or proceed at your own risk.

COPA's legal counsel has been asked to provide a report on the legal implications, should the Act amendment and revised regulations become law, but for now we are uncertain of the full implications until the Act and regulation amendments are in their final form.

If you want to express your concern about this unfolding situation, contact your Member of Parliament now <http://www.copanational.org/Contacting.cfm>, tell him/her about how unfair it is for the Minister to introduce such a significant and one-sided amendment without public consultation buried in an unrelated Bill, then ask your MP to influence his/her colleagues to postpone the amendment until proper consideration is given.