

LOGE LOCALE (A.I.M.T.A.)
1751
LOCAL LODGE (I.A.M.A.W.)

Memorandum submitted to
the
Transportation Committee

OTTAWA

March 2011

Good morning Mr. Chairman and Members of the Committee:

My name is Jean Poirier, V.P. of the IAMAW Local Lodge 1751 representing 3,500 workers. I am accompanied by officers from the Local Lodge, Serge Gélinas and Richard Guay, and the President of Local Lodge 1751 and Transportation District 140, representing 20,000 workers, Mr. Marcel St-Jean. Thank you for receiving us today to explain how Air Canada failed in its duty to comply with the *Air Canada Public Participation Act* by selling its Overhaul Centres to AVEOS formerly known as ACTS. This company (ACTS) was founded in 2004 following the creation of ACE Aviation, a parent company of Air Canada. ACE is a financial abomination, a parasite which has siphoned and distributed 5.3 billion dollars to its shareholders from its subsidiaries, such as Air Canada and ACTS. With regards to the sale of the Maintenance Centres to AVEOS, these transactions were done in various tax heavens as well as in Luxembourg with the help of 20 or more various intermediate societies.

Here is a brief history on the Air Canada Act: In 1977, the House of Commons passed the *Air Canada Act* ⁽⁹⁾. The purpose of this legislation was to ease the burden on the company by removing special benefits to certain destinations imposed by Government deregulation. In 1988 ⁽¹⁰⁾, the company was privatized and the Government adopted the *Air Canada Public Participation Act* ⁽¹⁾ which establishes the terms and conditions of the company. The Act is accompanied by transitional measures concerning the transfer by the Government and imposes the *Law on Official Languages* ⁽²⁾ on the new privatized company, compelling it to continue operating in French and English. According to another provision, it must also maintain its Head Office in Montreal.

For the purpose of our cause, we will go back in time to give you a better idea of the reason why the Conservative Federal Government of that time included another measure set out in Article 6 (1) (d) which reads as follows: **“Provisions requiring the Corporation to maintain operational and Overhaul Centres in the City of Winnipeg, the Montreal Urban Community and the City of Mississauga”**. To protect and reinforce that clause, the Government has added Article 7a), b) indicating that: **“The Corporation and its Shareholders and Directors shall not apply for continuance of the Corporation in another jurisdiction; or make any articles or by-laws that are inconsistent with the provisions included in its articles of continuance pursuant to subsection 6(1)”**.

6(1). As another guarantee, article 2 (3) says that: **“In the event of any inconsistency between this Act and the Canada Business Corporations Act, or anything issued, made or established under that Act, this Act prevails to the extent of the inconsistency.”**

To really understand the meaning of the Act, we have to return to April 12, 1988, when Minister Don Mazankowsky, Conservative Government Vice Prime Minister and former Transportation Minister, introduced Bill C-129 in the House of Commons. His comments on that day and on the following days were as follows:

1. "Maintenance and Overhaul Centres in Montreal, Winnipeg and Toronto are fundamental to the success of Air Canada;
2. None of these Centres will lose its importance;
3. The Centres will continue to expand;
4. The company fleet maintenance will continue to be done at those locations;
5. The Act would have to be amended if there were going to be any modification concerning the transfer of AIR CANADA's Overhaul Centres to another location."
6. Maintaining the Overhaul Centres was a requirement for the privatization and the Government would not sell any action to the public as long as this requirement was not met.

This says a lot about the meaning and the spirit of the Act.

At that time, Liberal MPs and Neo-Democrats (Mr John Turner, Mr. Brian Tobin, Mr. Ed Broadbent and Mr. David Orlikow) did not believe in the guarantees given to the employees by the Conservative Government concerning the maintenance of their jobs at AIR CANADA's Overhaul Centres. Those MPs felt that the Conservative Government wanted to impress the residents of Winnipeg, because the Federal Elections were held shortly after the Act was filed. Here is a statement by NDP's leader, Ed Broadbent, on this subject: "**The real reason why this issue was brought to our attention is simply because the Conservatives needed a subterfuge to confront the voters in Manitoba.**" In order to convince the MPs and the voters about the guarantees included in the Act, the Conservatives did business with the Government Senior Officers as well as with experts in order to clearly define both the intent and the spirit of the Law. This was done to remove any ambiguity and prevent any authority to circumvent the Act. Ms. Janet Smith, Privatization and Regulatory Affairs MP at that time, accompanied by Mr. Doug Lewis, General Counsel, came to testify at the Legislative Committee in order to demonstrate and explain the Act. Following are their testimonies: "**What is enshrined in law is as tight as you can get it. If they are in articles of continuance, it requires two-thirds of the shareholders to change that. The things you are referring to, such as the Head Office in Montreal, the Maintenance Centres, are not only enshrined in law but are mandatory in the Articles. They cannot be changed unless the law is changed. You cannot get any more of a guarantee than that.**" Below is the question asked by

Conservative MP for Winnipeg, George Minaker, who wanted to make sure he understood: **“Is it my understanding that clause 7 will eliminate any future Boards of Directors of the new company from manipulating the mandatory articles in paragraph 6.(1) a), b) c) and d) in particularly, dealing with the Overhaul Centres being located in Winnipeg, Toronto and Montreal, and that this clause restricts any fooling around at some future date? I also think they cannot do it by normal two-thirds vote ...”** Ms. Smith’s answer to these questions was: **“That is right. The only way they can do it is if somebody changes this Bill.”** Today, our officials, particularly Mrs. Brigitta Beck and her Senior Counsel John Thachet, who have testified before you, tell us that the obligation to keep the Overhaul Centres belongs to AIR CANADA’s Board of Directors and not to the Government, that the only option would be that the shareholders, who have sold the Overhaul Centres lodge a complaint, that the sale of AIR CANADA’s technical services was a private transaction and that the Ministry of Transportation representing the Government did not participate in this sale. Yet Ms. Beck changed her plea in **November 2006** when, accompanied by her Senior Counsel, Jacques E. Pigeon, testified that the AIR CANADA’s Technical Services fell within the legislative competence of the Government. Ms. Beck’s speech in 2006 was consistent with Ms. Smith’s speech in 1988. Then, why did Ms. Beck change her speech in 2010, when the Act had not been changed?

Two other expert witnesses, Professor Fred Lazar, a well known and respected Economist at York University and Economist Arthur Donner, came to testify before the Legislative Committee in 1988. Here are their testimonies: **“The new company’s private shareholders will not have any other choice than to institute legal procedures against the Government so that the clause referring to the Overhaul Centres be modified. The maintaining of the Overhaul Centres is public policy, as is the Official Languages Act. These are public policy decisions that I regard as part of the public policy role.”** Yet again, Ms. Beck contradicts our two experts by claiming that the Government is in the obligation to respect the Official Languages Act, but not the Act protecting our Overhaul Centres. Our two experts explain that if the shareholders had wanted to sell the Overhaul Centres, they would have done so by either convincing the Government to change the Act, or by taking the Government to Court. This was not done when the Maintenance Centres were sold to AVEOS.

As last experts, the 1988 Legislative Committee invited AIR CANADA President, Pierre Jeaniot, as well as Claude Taylor, Chairman on the Board of Directors, to give their testimonies and answer a few questions, as follows:

- 1) **“Could Air Canada consider getting rid of its Maintenance Centres, even if it does not appear in the Act?”**

Mr Jeaniot response is: "No"

2) **"What would be your definition of an Overhaul centre?"**

Mr. Jeaniot's answer : "You can just about strip an airplane completely and rebuild it. The physical Centres that have that kind of capability are referred to as Overhaul Centres."

Mr. Michel Bissonnette (Senior Director Engines and Airframe Maintenance) when testifying before the Transportation Committee, confirmed Mr. Jeaniot's position regarding the definition of an Overhaul centre. Here are his words: "**The Overhaul Centres perform what I would call major repairing.**" "**They take care of long-term maintenance of engines, cells and components**". This is a testimony that follows the logic of 1988. Finally, Mr Jeaniot, according to him, does not think that the Board of Directors would have the power to amend the clauses included in the Act concerning the Overhaul Centres. The only way would be if the Government took the decision to change the Law. This gave meaning and credibility to the words of the Conservative politicians of the time. The Conservative Deputy, George Minaker, will say, in response to the Unions, one of them being the International Association of Machinists, that this Bill protects the employees and us from any attempt from AIR CANADA to get rid or to sell its Maintenance and General Overhaul Centres. Vice .President Minister's Parliamentary Secretary and President of the Private Council, Mr Jim Hawkes, adds that the employees' work environment, their benefits, their future, all of that is guaranteed. This in accordance with the declaration of its Vice-Prime Minister, Don Mazankowski, concerning guaranteed employment. Here is his declaration: "**Some have suggested there should be further guarantees as to the level of employment at these Centres. May I simply remind the Committee that there are no such guarantees now, nor are there any existing guarantees concerning the existence of these major Centres in today's Air Canada Act**". So in effect, this legislation provides guarantees that did not exist before. This contradicts Mrs. Sénécal, AIR CANADA Legal Adviser, who, at the time of the December 14, 2010 meeting, misled the Transportation Committee by affirming that AIR CANADA did not need employees at its Overhaul Centres to conform to the Law. Today, with a new perspective, we must thank the opposition parties for having questioned the Conservative party which, in period of elections, had to be clear on the question of the Overhaul Centres, by asking many experts to testify. If the Government had not put its armored protection, thousands of workers at the Overhaul Centres would be without employment and AIR CANADA would follow the profile of low- end companies by giving maintenance contracts to countries like the EL SALVADOR and COSTA RICA which do not have the same standards of quality and safety. Today, Air Canada, via AVEOS, tries to do it illegally and this is approved by

Canada Transportation Ministry. On December 14, 2010, AIR CANADA Legal Advisor, Mrs. Louise-Hélène Sénécal, also said that:

- 1) Aeroman did not have the certifications for the maintenance of AIR CANADA's aircrafts;
- 2) That AIR CANADA will not do business and does not intend to do business with that center.
- 3) That there is no connection between AIR CANADA and AEROMAN, and;
- 4) she asked Mr Michel Guimond, Bloc Québécois MP, to take her word for it.

Her remarks were corroborated by two other representatives from AIR CANADA, Michel Bissonnette and Joseph Galimberti

Following these remarks, I would like to understand why Transport Canada and Ron Elvidge (V.P. Aveos) signed agreements so that AEROMAN and COOPESA in Costa Rica could take care of the maintenance on Canadian aircrafts. Why AEROMAN, in its report dated December 10, 2010, mentions AIR CANADA as if it was a customer. Mr. Joseph Galimberti, Government Relations Director at AIR CANADA, assures us that the kind of work performed in El Salvador is not the same kind of work carried out by the AIR CANADA employees on Canadian soil. Mrs. Sénécal adds that El Salvador only does maintenance for small aircrafts with narrow fuselage. I would like to remind the Government that AEROMAN does maintenance on small and large aircrafts (ex: Boeings 767) just like our general Overhaul Centres in Canada. (AEROMAN would have the opportunity to maintain 87% of AIR CANADA's fleet).

The concerns felt by Liberal MPs Grondin and MacLellan if ever the Government did not apply the Law, would be justified. These are the MPs' remarks: **“In privatising, it will be the Canadians who will pay the bill once more. The services offered as well as the travelers' safety will decrease since the profits will be the company's only goal. What will happen if the company uses subcontracting outside Canada?”** » At that time, the Government, by establishing a Law guaranteeing the maintaining of the Maintenance and Overhaul Centres, guaranteed a flawless maintenance service for the passengers' safety. Mr. Brian Jean, Parliamentary Secretary for the Transportation Ministry of the present Government, also thinks about AIR CANADA's passengers' safety on AIR CANADA. On December 14, 2010, his question for Mrs. Sénécal was: “Is it true that AIR CANADA is one of the most secure airline companies in the world?” Air CANADA's lawyer answer was “YES” and we agree on this point. If the Federal Government does not reinforce the Act and the triangle protection, safety in the Canadian Aviation Maintenance Centres will be in danger. This safety is due to our conscientious, professional and experienced technicians, who ensure a safe trip to

AIR CANADA's passengers. If the maintenance is not made anymore by AIR CANADA in its Overhaul Centres, but by subcontractors like AEROMAN in EL SALVADOR, then it is obvious that the safety will drop. If the Law is not applied and is not respected, you could one day have to answer to the Canadian taxpayers, the Media, the people closest to you and, ultimately, yourself. Why did you play with the security of your fellow citizens? You can imagine the worst scenario. One day, you could be the victim.

Here are our recommendations:

1. That Air Canada complies with the Act by going back to being the owner of its Overhaul Centres.
2. That the Canada Industrial Relations Board's decision concerning the transition of the Air Canada employees to the subcontractor AVEOS be cancelled until the Government pronounces itself on the Act.
3. That the travelling of AIR CANADA's employees on Alfred Nobel Boulevard in Ville St-Laurent, which does not belong to Air Canada but is provided by Aveos, be suspended until the Government pronounces itself on the Act.

- 1) <http://Lois-laws.justice.gc.ca/PDF/Loi/A/A-10.1.pdf>
- 2) <http://Lois-laws.justice.gc.ca/PDF/Loi/O/O-3.01.pdf>
- 3) Participation Publique au Capital d'Air Canada : Art.6. (1) (d)
- 4) Ontario court of justice Court File No. 03-CL-4932
- 5) Déclaration de Robert Milton du 8 octobre 2004
- 6) The PLAN du 12 juillet 2004
- 7) The PLAN-Appendix B-schedule "D" page 36
- 8) Road Show Charam Bolouri june 2007
- 9) The Canadian Airline Industry www.dsp-psd.pwgsc.gc.ca
- 10) Historique 1988 à 2010
- 11) Silverbow International to AVEOS
- 12) Document ATSS diapo
- 13) ATSS Luxembourg mars 2010
- 14) Ace partner with Sageview Capital and KKR WWW
- 15) Aveos Fleet Performance www.gov.mb.ca
- 16) ATSS Luxembourg P.109773
- 17) ATSS Luxembourg 12 mars 2010
- 18) Ace Aviation rapport financier 2007 P.6 et P.7
- 19) Une part est équivalente à 1\$ canadien

The 1988 ***Air Canada Public Participation Act***([1](#)) set out conditions for the privatization of Air Canada. Along with transitional measures leading to Government divestiture, the Act sought to ensure that Air Canada would continue to operate in both French and English by making the newly privatized corporation subject to the ***Official Languages Act***([2](#)) (the OLA). A further provision required Air Canada to maintain its head office in Montréal, and operational Centres in Winnipeg, Montréal, and Mississauga.