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Via email: Karen.Plourde@otc-cta.gc.ca

Regulatory Modernization Initiative (RMI)

Ms. Plourde:

This will follow-up our meeting of May 30, and the issues that we discussed, therein. We wanted to emphasize a few issues for the consideration of the CTA, and to discuss the contents of the new Discussion Papers, distributed by the CTA in early September.

**Canadian Ownership and Control**

HAC believes that business models which dilute Canadian ownership, without reciprocal access to foreign markets on similar terms are not in the best interests of Canadian carriers or the traveling public. Foreign and American carriers will naturally expect a return on their investment, that will flow out of Canada to the foreign country. Access by Canadians to these foreign-owned carriers may be in the short term best interests of the traveling public, but the model will ultimately result in revenue flowing out of Canada, and lost jobs.

This association's membership is aware that Bill C-49 proposes to amend the definition of Canadian in the Canada Transportation Act in order to raise the threshold of voting interests in an air carrier that may be owned and controlled by non-Canadians, while retaining its Canadian status, while at the same time establishing specific limits related

to such interests, set out in section 15 (c). This association opposed the increase in the foreign ownership in an appeal directly to the Minister of Transport. Even with the limitations set out in section 15 (c) of Bill C-49, and the exclusions by industry sector that the Minister has proposed, we remain alarmed by the prospective changes. Foreign investors have always been very creative about ensuring that they have some measure of control over their investment in Canadian operators – the increase to the foreign ownership limits will just make it a little easier for them, with very little upside for our operator-members, who do not often need to look outside Canadian borders for access to capital.

Even under today's foreign ownership limits, we have concerns about the ability of the CTA to consistently evaluate foreign ownership circumstances and render transparent and reasoned decisions (see below), but we also have reservations about their ability to monitor foreign ownership limits on an ongoing basis. The members of the Helicopter Association of Canada consider that these changes will only increase the vulnerability of the helicopter industry to foreign control, and will call for increased vigilance on the part of the CTA.

This association's members have consistently opposed increases to the foreign ownership limits in the absence of reciprocity from the other country. Our members are prepared to compete internationally, but only on an equal footing, with access by Canadian operators to foreign markets, on the same terms.

*Transparency of CTA Decisions with respect to Ownership*

We have reviewed the Agency's interpretation notes on the Canadian Ownership Requirement and on Control in Fact, and while we appreciate the complicated nature of these decisions, in a free and democratic society a general description of the considerations used to come to a judicial or quasi-judicial decision is no substitute for the reasoning used to arrive at an individual decision.

HAC believes that the CTA should publish their decisions on this subject with reasons. While we appreciate that the factual circumstances relating to a change in ownership are commercially sensitive, the decision-making process should be subjected to the light of public scrutiny – for Canadians and Canadian operators who believe there is value in having a truly Canadian controlled aviation industry, but also for those who may be considering restructuring of their own businesses. Canadian business owners are entitled to understand how their applications for restructuring will be considered by the CTA in advance – for predictability purposes, and to avoid multiple rejected applications. It would also allow the CTA, in much the same way that the courts establish a body of jurisprudence, to develop publicly available precedents. It seems to the members of this association that the public's interest in understanding the detail of this important decision making process outweighs any rights of the applicant to keep their ownership structure confidential.

**Code sharing and Wet-leasing**

HAC has reviewed the Discussion Paper on the above-captioned subject, set out at https://otc-cta.gc.ca/eng/discussion-paper-code-sharing-and-wet-leasing, and since we do not code share or generally wet-lease aircraft, we have no comments. Furthermore, the new Passenger Protection provisions set out in Bill C-49 have little application to most Canadian helicopter operations.

**Charter Activities and Advance Payment Protection**

HAC has reviewed the Discussion Paper set out at https://otc-cta.gc.ca/eng/discussion-paper-charter-activities-and-advance-payment-protection. We believe that there is value in Option A: Three categories of Canadian originating charters. Our members rarely resell seating capacity to the public, and it would insulate them from the requirement to provide any financial guarantee for funds that are rarely at risk in the same way that passengers purchasing tickets on Resaleable Charters are exposed.

**Excluded Services**

HAC believes that Lodge Operations should be captured by the requirement for a CTA License. Notwithstanding that the cost for access to camps is often included in the price of the trip, the passenger has every reason to believe that their transportation is being carried out by a licensed commercial air operator. Exceptions to the requirement for a CTA License on this basis, devalue a Commercial AOC at the expense of passenger safety.

We are aware that is has been suggested by another commenter that helicopter operators and Air Ambulance operators should be excluded altogether from the application of the CTA. With these suggestions, the Helicopter Association of Canada and its members respectfully disagree. Except for the existing exclusions set out in Section 3 of the ATR and section 56 of the CTA, we believe that there is still value for Canadian helicopter operators to hold a CTA license.

Many of the activities of the Agency are designed to regulate the activities of the large scheduled air operators. These requirements of the Act are largely irrelevant to the commercial helicopter community, including many of the requirements of the Tariff Filings, and the prospective new Passenger Rights requirements, for example. The circumstances of carriage and the cost of travel in our industry segment are largely defined by the contractual relationship with the customer. However, the elements of the Act relating to Canadian Ownership limits and minimum insurance requirements remain very relevant, and we comment on these items elsewhere in this submission.

Air Ambulance services, whether they are operated by the Province or by a contracted private sector operator, should continue to be licensed by the CTA. Government Air Operators of any description who offer their services outside of their own governmental department – that is, outside their own Federal or Provincial Departments should be required to hold a CTA License and a Part VII AOC. Principally, we do not believe that Government Air Services should be offering their services on a charter basis to the

public at all, and many of our members have commented that they are "competing with their own tax dollars" when this occurs. While we appreciate that the policy decision to allow this to occur is outside of the purview of the CTA, our members believe that if government air services are competing with the Private sector at any level, they shouldn't be extended any further relief from the financial, licensing, and regulatory realities of operating a Private Sector Commercial Air operation.

Virtually all Canadian helicopter operators conduct both Specialty Air Service operations and passenger carrying operations. We believe that with the exception of the excluded services already identified, there should be no further additions.

**New Business Models and Industry Tools**

Recently, there has been a trend in Canada to allow foreign air operators to offer their services, even when there has been no investigation conducted on the ability of the Canadian aviation community to meet the demand for lift. While most of these cases have occurred in the context of the fixed-wing cargo community, we believe that they present a dangerous precedent for Canadian commercial operators of all types. Unless the cargo is so large that it cannot be carried by aircraft in the Canadian fleet, for example, then customers should be compelled to use Canadian air operators – and they should be compelled to use Canadian operators for back-haul operations, if the back-haul cargo can carried by Canadian operators.

We believe strongly that there is value in a Canadian owned commercial aviation community, and in today's economic climate and with the value of the Canadian dollar against foreign and particularly US currencies, the Canadian industry is particularly vulnerable to foreign ownership.

**Insurance Requirements**

We have reviewed the Annexed "Discussion Paper on Air Liability Insurance Provisions" distributed by the Agency on September 1 2017 at https://otc-cta.gc.ca/eng/discussion-paper-air-liability-insurance-provisions, and we offer the following comments.

*Minimum Passenger Liability Coverage*

Virtually all operators carry passenger liability coverage in excess of the $300,000 CA, per passenger seat, as a means of managing corporate risk. We accept that the minimum level of coverage is in need of review since it has been 34 years since it was set at that level. We suggest however, that the minimum coverage should be adjusted upwards in discussions with the insurance community and through a review of CTA insurance filings, to reflect an increase to a new *minimum* standard. Anything in excess of this would be to usurp the right of carriers to manage their own corporate liability in this regard. We also agree that the limit could be adjusted every five to ten years to reflect a minimum industry standard and adjusted for inflation. The ATR should be amended to reflect that air carriers operating a domestic or international service must hold liability insurance for injuries sustained while on board an aircraft *or while embarking or disembarking*.


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*Per seat vs. per passenger basis for insurance coverage*

The change to reflect the requirement for insurance based on a per passenger basis may have the effect of lowering the cost of insurance for some carriers who do not operate with all seats occupied, and would be supported.

*Minimum Public Liability Coverage*

This association has no objection to the move to the metric standard, and sees no reason to adjust the three-level breakdown in the MCTOW categories. Again the minimum level of insurance could be raised to reflect a minimum industry practice, and adjusted every 5-10 years to keep pace with inflation. If the initial adjustment is done to reflect a *minimum* industry practice, then it should not affect the financial viability of carriers.

*Persons not on board*

Under the existing ATR provisions, the size of the aircraft dictates the level of Public Liability Coverage, and in broad terms, is an indication of how much damage to persons and property on the ground could occur. This is a matter that should be considered in light of industry minimum insurance best practices. Naturally, carriers want to ensure that their own corporate liability is managed properly from an insurance perspective in the event of a catastrophic event, and persons on the ground are entitled to expect that they will protected from a catastrophic event at some minimum level.

*Air Carrier Employees*

Employees not on board the aircraft who are not acting in the course of their employment should be included in an air carrier's public liability insurance requirements.

*Chemical drift*

The chemical drift exclusion clause should be removed from the ATR.

*Public Liability vs third party liability*

The term "public liability" should be replaced with "third party liability" throughout the ATR to increase clarity and better align with other international regimes.

*Insurance provisions relating to aircraft with flight crew arrangements*

The indemnity provision should be removed from the ATR, and the ATR should be amended to require that the additional insurance afforded to the contracting air carrier be primary and without right of contribution from any other insurance policy held by the


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contracting air carrier. The removal of the indemnity provision would simplify the process insofar as the Insurance certificate filings are concerned, but still insure that coverage at the required level was maintained.

*Other*

HAC sees no reason to not combine the referenced forms.

Thank-you for the opportunity to comment.

If you have any further questions, please contact me directly on my cell at 613-884-1422 or by email at fred.jones@h-a-c.ca.

Sincerely,

Fred L. Jones BA LLB
President & CEO