



Advisory Circular

Subject: Land Use and Jurisdictional Issues at Aerodromes

Issuing Office:	Standards	Document No.:	AC 300-009
File Classification No.:	Z 5000-34	Issue No.:	02
RDIMS No.:	9963409-V2	Effective Date:	2014-11-27

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1.0 INTRODUCTION

- (1) This Advisory Circular (AC) is provided for information and guidance purposes. It describes an example of an acceptable means, but not the only means, of demonstrating compliance with regulations and standards. This AC on its own does not change, create, amend or permit deviations from regulatory requirements, nor does it establish minimum standards.

1.1 Purpose

- (1) Recent Supreme Court decisions have reaffirmed that federal government has exclusive jurisdiction over aeronautics. These decisions have examined whether or not specific provincial and municipal legislation impaired core federal power over aeronautics.
- (2) The purpose of this document is to improve the awareness of aerodrome operators/developers and other interested parties in the aviation community of possible valid provincial, territorial, and municipal legislation related to activities and land use at aerodromes.

1.2 Applicability

- (1) This document applies to Transport Canada Civil Aviation (TCCA) personnel, delegates, the aviation industry, provincial and municipal authorities and the public.

1.3 Description of Changes

- (1) Due to the number of changes incorporated into this Issue, readers should review the content of the entire document. The major changes are:
 - (a) removed Aerodrome Standards Guidance for the interpretation of an aerodrome including all activities that occur at an aerodrome;
 - (b) removed references to certified aerodrome versus registered aerodrome; and
 - (c) removed recommendation for stakeholders to engage legal counsel.

2.0 REFERENCES AND REQUIREMENTS

2.1 Reference Documents

- (1) It is intended that the following reference materials be used in conjunction with this document:
 - (a) *Aeronautics Act* (R.S.C., 1985, c. A-2);
 - (b) Part I, Subpart I of the *Canadian Aviation Regulations* (CARs) – General Provisions;
 - (c) Part III, Subpart I of the CARs — *Aerodromes*.

2.2 Cancelled Documents

- (1) As of the effective date of this document, the following document is cancelled:
 - (a) Advisory Circular (AC) 300-009, Issue 01, 2013-12-18 – *Land Use and Jurisdictional Issues at Aerodromes*.
- (2) By default, it is understood that the publication of a new issue of a document automatically renders any earlier issues of the same document null and void.

2.3 Definitions and Abbreviations

- (1) The following **definitions** are used in this document:
- (a) **Aeronautics Act, s. 3 (1) “Aerodrome”** means any area of land, water (including the frozen surface thereof) or other supporting surface used, designed, prepared, equipped or set apart for use either in whole or in part for the arrival, departure, movement or servicing of aircraft and includes any buildings, installations and equipment situated thereon or associated therewith.
 - (b) **Aeronautics Act, s. 3 (1) “aircraft”** means any machine capable of deriving support in the atmosphere from reactions of the air, and includes a rocket.
 - (c) **Aeronautics Act, s. 3 (1) “airport”** means an aerodrome in respect of which a Canadian aviation document is in force.
 - (d) **Part I, Subpart I of the CARs “servicing”** in respect of an aeronautical product, means cleaning, lubricating and the replenishment of fluids not requiring the disassembly of the product.
 - (e) **Part I, Subpart I of the CARs “maintenance”** means the overhaul, repair, required inspection or modification of an aeronautical product, or the removal of a component from or its installation on an aeronautical product, but does not include:
 - (a) elementary work;
 - (b) servicing; or
 - (c) any work performed on an aircraft by the manufacturer prior to the issuance of whichever of the following documents is issued first
 - (i) a certificate of airworthiness,
 - (ii) a special certificate of airworthiness, or
 - (iii) an export airworthiness certificate.
 - (f) **Part I, Subpart I of the CARs “registered aerodrome”** means an aerodrome registered by the Minister pursuant to Subpart I of Part III of the CARs.
- (2) The following **abbreviations** are used in this document:
- (a) **AC:** Advisory Circular
 - (b) **CARs:** Canadian Aviation Regulations

3.0 BACKGROUND

- (1) The Government of Canada has exclusive jurisdiction over aeronautics and has established a legal framework through the *Aeronautics Act* and *Canadian Aviation Regulations (CAR)*, which sets safety and security requirements for the civil aviation industry among other things. Under this legislation, the Minister of Transport is responsible for the promotion of aeronautics and the Act provides authority to make regulations respecting activities at aerodromes, including the location, inspection, certification, registration, licensing and operations.
- (2) Airports and aerodromes are subject to different provisions of the CARs. An airport is an aerodrome that is certified by the Minister and is subject to the certification requirements of CARs – Part III, Subpart II. Aerodromes that are not subject to Subpart II are governed by a permissive regime that does not require prior federal authorization for the establishment/location of aerodromes. These non-certified aerodromes, whether they are registered with Transport Canada or not known to Transport Canada, must comply with the CARs – Part III, Subpart I. As regulator, Transport Canada provides oversight of both airports and aerodromes in accordance with the applicable CARs.

- (3) Issues surrounding the location, development, and use of aerodromes may involve multiple jurisdiction's legislative authorities, such as federal, provincial, territorial and municipal legislation. This complex legal framework has raised concerns with aerodrome operators/developers and other interested parties regarding the applicability of the *Aeronautics Act*.
- (4) Two recent decisions from the Supreme Court of Canada (*Quebec (Attorney General) v. Lacombe*, [2010] 2 SCR 453 and *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, [2010] 2 SCR 536) have reaffirmed federal jurisdiction over aeronautics matters. These decisions speak to overlapping jurisdiction's laws as they relate to land use and aerodrome activities. (Links to the two Supreme Court decisions are attached as Appendix A.)

4.0 DISCUSSION

- (1) The exclusive jurisdiction over the location of aeronautical facilities has been repeatedly affirmed by Canadian courts. The federal aeronautics jurisdiction encompasses not only the regulation of the operation of aircraft and aerodromes, but also the power to determine the location of aerodromes.
- (2) In the *Lacombe* and *COPA* decisions, the Supreme Court of Canada has recognized that a degree of jurisdictional overlap is inevitable. In cases of multiple jurisdictions' laws, compliance with these laws might be enforced by those jurisdictions.
- (3) The *Aeronautics Act* may not grant immunity from compliance with other applicable federal, provincial, territorial or municipal legislation. As mentioned in the *COPA* Supreme Court decision, the test is whether the provincial law impairs the federal exercise of the core competence.

5.0 RECOMMENDATION

- (1) In order to comply with the *Aeronautics Act* and other federal, provincial, territorial and municipal legislation that may have an impact on the activities related to an aerodrome, it must be understood that Transport Canada is not in a position to provide legal advice respecting the application of existing laws that fall outside of its jurisdiction.
- (2) The terms "servicing" and "maintenance" are clearly defined in the *Aeronautics Act* and the CARs. Transport Canada recommends referring to these two pieces of legislation when questions arise.
- (3) Determination of whether or not provincial, territorial, or municipal legislation impairs the federal core competencies is a matter to be determined by courts on a case-by-case basis. Transport Canada does not provide advice regarding the applicability of provincial, territorial, or municipal legislation.
- (4) In cases of valid and applicable jurisdictional overlap of laws compliance with provincial, territorial and municipal non-aeronautics legislation might be enforced by those jurisdictions.

6.0 INFORMATION MANAGEMENT

- (1) Not applicable.

7.0 DOCUMENT HISTORY

- (1) Advisory Circular (AC) 300-009 Issue 01, RDIMS 9163929 (E), 9163986 (F), dated 2014-02-25 – *Land Use and Jurisdictional Issues at Aerodromes*.

8.0 CONTACT OFFICE

Suggestions for amendment to this document are invited, and should be submitted via:

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ANNEX A - SUPREME COURT DECISIONS

SUPREME COURT OF CANADA

Quebec (Attorney General) vs Canadian Owners and Pilots Association (COPA)

<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7881/index.do>

Quebec (Attorney General) vs Lacombe

<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7880/index.do>