

## SEARCH FOR THE LEGAL LIABILITY OF AIR TRAFFIC CONTROLLERS

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We are now at a crucial point in the evolution of flying and controlling. According to forecasts air traffic will multiply by leaps and bounds in the following years. Besides the problems of congestion that increased traffic will create, other problems are going to be intensified. With the advent of the Jumbo jet the problem of wake turbulence is alarmingly increased. Wake turbulence is an invisible, cone shaped atmospheric disturbance that flows from the wing tips of one plane, and that can effect, distort, or destroy the aerodynamic lift of planes behind. Previously, this had been of concern mainly to light aircraft, however, a growing number of accidents have been attributed to this phenomenon. Since it is proportioned to lift, the vortices become stronger as aircraft weight increases. Tests indicate that a Jumbo jet could produce peak vortex velocities of more than 200 ft. per second for another plane one mile behind.

The problems we are going to concern ourselves with is the legal liability of Air Traffic Controllers in Canada. When an Air Traffic Controller issues a clearance, if there was an accident would the man who issued the clearance be liable? Is there any liability on the controller who fails to warn a pilot about possibilities of wake turbulence? Is the controller responsible for giving the pilot notice of changing weather conditions? What is a controller's position in circumstances where fatigue interferes with a controller's performance? In Canada, overtime is the rule rather than the exception and there doesn't appear to be a maximum yet one notes that pilots must generally observe limitations in the amount of flying they do.

The controllers are not so much concerned about the financial aspects of being liable because they are protected under Sections 3 and 4 of the Crown Liability Act, R.S.C. 1952, and in December, they were reassured by the Treasury Board that if a controller was named as defendant, legal counsel would be provided. The controllers are worried about, as they put it, their reputation, their personal dignity, and their families' welfare. If they are found liable what guarantee do they have that the government

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won't revoke their licence. It is for this reason that the controllers wish to know the limits of their liability. They wish to know when there is an onus on them to provide a pilot with relevant information i.e. respecting weather or wake turbulence. These and other questions or grey areas will be discussed in some depth.

A basic comprehension of the Statutory Basis of Air Control is necessary in attempting to evaluate controller liability. The Aeronautics Act, The Air Regulations and the Air Navigations Orders form the basis of Canadian air traffic control measures. Canada is also a signatory of the Chicago Convention (Convention on International Civil Aviation). Under Article 12 and Article 28 of the Convention, Canada does provide air traffic control and air traffic facilities for both national and international traffic. Annex 11 to the Convention authorizes contracting States to establish and supervise Air Traffic services and also sets out the objectives of the Air Traffic services which are set forth in para. 22 of Ch. 2 of Annex 11 which are to:

1. prevent collisions between aircraft;
2. prevent collisions between aircraft on the manoeuvring area and obstructions on that area;
3. expedite and maintain an orderly flow of air traffic;
4. provide advice and information useful for the safe and efficient conduct of flights;
5. notify appropriate organizations regarding aircraft in need of search and rescue aid and assist such organizations as required.

Annex 2 spells out the Rules of the Air and para. 2.3.1. of chapter 2 makes the pilot in command of an aircraft responsible for its operation in accordance with the rules of the air except in cases where it is absolutely necessary to depart from such rules "in the interests of safety".<sup>1</sup>

In part one of the Aeronautics Act Parliament is given the necessary

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1. Annex 2-231 which says:

The pilot in command of an aircraft shall whether manipulating the controls or not be responsible for the operation of the aircraft in accordance with the rules of the air except that he may depart from these rules in circumstances that render such departure absolutely necessary in the interest of safety.

**FOLLOWING CDN. PROVISION:**

Nothing in the regulations shall be held to relieve the owner, operator, or flight crew members of an aircraft of the consequences of any neglect in the use of lights or signals; or neglect to keep a proper lookout—or of neglect of any precaution that is req'd. by the ordinary practice of the air or by special circumstances of the case.

Amendment # 1 Supplement to Annex 2 (5th Ed.) Rules of the Air.

statutory authorization to provide ATC.<sup>1,1</sup> The responsible minister in the first instance is the Minister of Transport. Pursuant to s.s. 1 of para. 4 the minister by regulation subject to the approval of the Governor-General in Council is authorized to regulate ATC.

The Air Regulations<sup>2</sup> consist of eight parts. Section 500 of part 5 incorporates a reference to the rules of the air contained in Annex 11 of the Chicago Convention and then contains rules of general application. Sections 600 and 601 of part six refer to ATC.

Section 600 "The Minister may subject to these regulations make such directions as he deems necessary.

(a) Respecting the provision of ATC service within such portions of the air space and at such airports as may be specified by him and

(b) Respecting the standards and procedures to be followed in the operation of any ATC service or at any ATC unit."

Therefore ATC measures are made entirely through the directions of the Minister of Transport.<sup>3</sup>

The Minister may also make directions in the form of the Air Navigation Orders. Series V of the Air Navigation Orders contain subject matters applying to and effecting ATC.

The pilot's duty to comply with ATC instructions is found in part 5, section 505 of the Air Regulations.

"Pilot in command of an aircraft shall comply with all ATC clearances or instructions received by him."

The only time the pilot has the right to deviate from instructions is in the case of emergency.<sup>4</sup> In the case of *Grossman & Son v. Rex*<sup>5</sup> it was stated that when there is a control tower on an airport it is from there that the aerial traffic is governed and all pilots are bound to comply with instructions they receive from the operator.

The above statutes are of little value in determining liability. According to Jacques Fortier, Counsel with Legal services Division of the Canadian Department of Transport, there has been no recent court decisions involving air traffic control. Although there have undoubtedly been incidents where controllers have been involved, they have all been settled out of court. The United States National Transportation Safety Board recently estimated 335 midair collisions in the next ten years with a death

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1.1 Aeronautics Act, R.S.C. 1952, C.2.

2. Passed 29 Dec., 1960 p.c. 1960-1775-SOR/61-10.

3. Aeronautics Act, R.S.C. 1952, C.2, S.4, ss.2.

4. Air Regulations S. 552 ss. 2.

5. *Grossman and Son v. Rex*, 1952 1 S.C.R. 571.

toll close to 800. This is 50% higher than tolls in the past ten years which would indicate that it probably won't be too long before controllers will be defendants in civil suits in Canada arising out of these mid-air. Therefore a consideration of the British jurisprudence which appears to be based on the fault theory of negligence and the American jurisprudence which imposes a relatively strict degree of liability on the air traffic controller, will aid us in attempting to suggest a basis of liability in Canada.

The English courts have not had the experience dealing with this topic that the Americans have. It has been suggested, however, that the broad principles of the law of negligence will apply. Air Traffic Control is defined under United Kingdom Air Navigation Order schedule 11, paragraph 1, as "a service to promote the safe, orderly and expeditious flow of Air Traffic". Pilots in command of an aircraft are under an obligation, having the force of statute and enforceable by penalties, to comply with the instructions or obtain the permission of the Control Authorities in a large variety of circumstances. The ultimate responsibility for the safety of an aircraft rests with its captain or pilot,<sup>6</sup> but in discharging his responsibility he must often rely completely on those who provide or operate air navigation facilities.

Tortious liability arises from the breach of a duty primarily fixed by the law; such duty is towards persons generally and its breach is redressible by an action for unliquidated damages.<sup>7</sup> The torts with which air law is chiefly concerned are acts of carelessness and acts which are breaches of duties specially prescribed by statutory enactments and cause injury or damage.

The duty of the controller could be based on the general principle in *Gilbert v. Trinity House Corp.* (1886) 17 QBD at 799:

"The law is plain that whoever undertakes the performance of, or is bound to perform duties—whether they are duties imposed by reason of the possession of property; or by the assumption of an office, or however they may arise—is liable for injuries caused by his negligent discharge of those duties."

Therefore, we would have to agree with Shawcross and Beaumont that based on the British fault theory of negligence that Air Traffic Controllers are under a statutory duty to take care and that liability would arise under the following circumstances:

1. that persons exercising ATC are under a duty to take

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6. Rules of the Air and Air Traffic Control Regulations 1969 (Appendix C).

7. Windfield on Tort 6th Ed. p.5.

reasonable care in giving instructions, permission or advice which the person to whom they are given, is legally bound to obey or obtain and that they and those responsible as their employers would be liable for any damage caused by a breach of this duty.

2. that they are probably under a similar duty and liability in respect of any instructions or advice issued with the intention that they should be acted on, even if not falling within the categories of instruction which the recipient is legally bound to obey.

3. that they are probably also under a duty to take reasonable care to give all such instructions and advice as may be necessary to promote the safety of aircraft within their area of responsibility and would therefore be liable for negligently omitting to give such instructions as well as for negligently giving incorrect instructions or advice.

Of course, to what extent the controller will be found liable is hard to foresee until a body of case-law is developed. In our opinion it is unlikely the liability will be as strict as that of the United States.

The United States appears to be the only Jurisdiction where there is a sizeable body of judicial decisions to study.

In the United States, under the Federal Tort Claims Act,<sup>8</sup> the government may be held responsible for the negligent actions of its air traffic controllers. Defences normally put forward by the government are: the discretionary function exception to the Act, no duty, misrepresentation, primary responsibility of the pilot and no negligence on the facts.

The courts have rejected the claims by the government that the actions of air traffic controllers could lie within the discretionary function<sup>9</sup> exception to the FTCA and also at the same time rejected the clause that the U.S. shall be "liable in the same manner and to the same extent as a private individual under the circumstances."<sup>10</sup> The courts held in *Union Trust vs. U.S.*<sup>11</sup> that the controller was not performing the sort of

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8. Federal Tort Claims Act, 28 U.S.C.A. S.S. 1346, 2671 et. seq.

9. 28 U.S.C.A. S.S. 2680 provides "Exceptions. The provisions of this chapter and ss 1346(b) of this title shall not apply to—(a) Any claim based upon an act or omission of any employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid or based upon the exercise or performance or failure to perform a discretionary function or duty on the part of a federal agency or employee of the Government, whether or not the discretion involved be abused."

10. 28 U.S.C.A. ss.2674.

11. *Union Trust v. United States*, 113 F. Supp. 80 (D.C. D.C.1953)—where the United States assumes the function of regulating air commerce and the responsibility of regulating the flow of traffic at a public airport. The government is liable under Federal Tort Claims

discretionary functions envisaged by section 2680(a) of the FTCA. The court went on to state that "discretion was exercised when it was decided to operate the tower but the tower personnel had no discretion to operate it negligently." The second defence which the government attempted to present was that it was performing a function which was not performed by private individuals but this defence did not survive examination by the court. The court found that there were private control towers, that air traffic services had initially been provided privately by the airlines and that there was no reason why they could not be again. Therefore, the government employee was liable in the same way as a private individual.<sup>12</sup>

Neither has the defence of no duty, been received well by the courts. In *United Air Lines vs. Wiener*<sup>13</sup> the courts held that although the primary responsibility in VFR conditions to avoid collision was upon the pilot the "good Samaritan" doctrine of Tort Law applied in that "if the Government undertakes to perform certain acts or functions thus engendering reliance thereon, it must perform them with due care; that obligation of due care extends to the public and the individuals who compose it."<sup>14</sup> The defence of "no duty" will be dealt with further later.

The defence of no responsibility has generally been upheld only in cases involving aircraft flying under Visual Flight Rules. The courts have held that the ultimate responsibility for the safe operation of an aircraft flying under VFR weather conditions rests upon the pilot,<sup>15</sup> and has stated that this is so under government regulations having the force of law.<sup>16</sup> In *Hochrein v. U.S.*<sup>17</sup> it was held that this "primary responsibility" defence only arose after the controller had fulfilled his duty to warn.

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Act to suit for injury or death resulting from negligence of its servants or agents engaged in such regulation.—evidence established negligence of control tower personnel in clearing both planes for the same runway at approximately the same time.

12. *Eastern Airlines v. Union Trust*, 221 F.2d. 62.

(a) 74 . . . when the United States entered the business of operating a civil airport and an air traffic control tower in connection therewith, it assumed a role which might be and was assumed by private interests. Hence under 28 U.S.C. ss.1346 (b) and 2674, the government is liable for the negligent acts or omissions of its control tower operators in the performance of their functions and duties. . . .

13. *United Airlines, Inc. v. Wiener*, 335 F.2d 379 (1964).

14. *United Airlines, Inc. v. Wiener* Ibid at 396 citing from *Fair v. United States* 234 F.2d. 88 at 294 (5th Cir. 1956).

15. *Wenniger v. U.S.* 234 F. Supp. 499 aft. 352 F.2d. 523. *Gill v. U.S.* 285 F. Supp. 253. *United Airlines v. Wiener* 335 F.2d. 379 cert. dis. 85 S. Ct. 452. 379 U.S. 951. 13 L. Ed. 2d. 549. *Tilley v. U.S.* 375 F.2d. 678.

16. Fed. Av. Act of 1958 ss. 307 (b,c) 49 U.S.C.A. ss. 1348 (b,c). *Sawyer v. U.S.* 279 F. Supp. 324.

17. *Hochrein v. U.S.* 235 F. Supp. 317 (1965).

. . . tower controller had been negligent in failing to warn plaintiff's decedent,

It has also been held that the controller has no duty to ascertain the qualifications of a pilot e.g. whether he was qualified to fly under IFR or what equipment was on board the aircraft.<sup>18</sup>

Although under VFR weather conditions the primary responsibility for avoiding other aircraft is upon the pilot the onus is shifted to the controller when the pilot is operating under instrument flight rules (IFR). The courts have imposed a concurrent duty on both the pilot and controller to ensure the safety of the plane and its passengers.<sup>19</sup> Liability in each case will have to be determined by the courts or by mutual agreement but generally the controller will be involved in each case as a party to the action.

In the earlier period of aviation the pilot was regarded as being solely responsible for the operation and safety of his aircraft. Since that time the responsibilities of the controller have greatly increased and there is a great area of concurrent liability of the pilot and the controller. The delineation of responsibility in this area of concurrent liability is hazy and a question of fact to be determined by the courts. This question of fact seems to have been determined by the courts with sometimes apparently conflicting results.

Since the *Union Trust* case the government has rarely attempted to use "discretionary function" or the private party analogy as a defence. The government has attempted to limit the controller's liability to that laid out in the manual but this defence has been revoked by the courts. In *Lightenburger v. U.S.*<sup>20</sup> a controller was held liable when he did not follow the mandatory laid out in the Air Traffic Control Procedures Manual yet in *Furumizo v. U.S.*<sup>21</sup> where the controller fulfilled the obligations laid out in the manual and warned the pilot of a light aircraft of turbulence from a departing DC-8, the court held that the controller had a duty when he saw the light aircraft attempting to takeoff into an obvious danger to stop or attempt to stop the takeoff. The court said that nothing in the regulations says that a controller shall not act. The court said that "there was simply a slavish purported following of the 'book' " with no attempt to exercise a judgment, which under the circumstances it was the duty and within the power of the controller to exercise, and which would and could have

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who had been given clearance by radio, of possible danger from second airplane which had not acknowledged controller's signals.

18. *Kullerg v. U.S.* 271 F. Supp. 788. *Rowe v. U.S.* 272 F. Supp. 462.

19. *Cattaro v. Northwest Airlines, Inc.* 236 F. Supp. 889 (1964).

Evidence established that negligence of airline crew, bomber pilots and government air traffic controller in near miss between airliner and bomber resulting in injuries to passenger should be apportioned, for purposes of contribution between government and airline, in the percentage of 65% to the government and 35% to the airline.

20. *Lightenburger v. United States* 10 Avi. 18,316, 298 F. Supp. (C.D. Cal. 1969) 813.

21. *Furumizo v. United States*, 245 F. Supp. 981.

avoided the accident. In *Hartz v. United States*<sup>22</sup> the court held that the controller's negligence in failing to properly caution the pilot according to the instructions contained in the manual was the proximate cause of the crash although the pilot was subsequently found guilty of contributory negligence and 25% of the fault was attached to him. In that case it was held that terminology used by the controller was to "watch the prop-wash" from a departing DC-6. The court held that this was not sufficient warning and not in accordance with the manual. The implication to be gathered from the Hartz case is that if the controller had given the proper instructions as outlined in the manual he would not have liable but perhaps this is too great an implication to be taken from the case.

Wake turbulence is possibly the most contentious field of liability that faces the controller or for that matter the pilot. Wing tip vortices are the most persistent and dangerous form of wake turbulence. These vortices have been likened to "horizontal tornadoes" in that they spill off the wing tips of an aircraft and form a rotating cone of air similar in shape to a tornado. They trail behind the aircraft, settling until a certain height above the ground, then spreading apart. The dissipation time etc. has not been completely ascertained, although one crash of a Cessna 310 has been blamed on the vortices of a Boeing 707 which did a missed approach 10-11 minutes before the Cessna's approach and the court in this case said that a good rule of thumb for clearance behind an aircraft of the configuration of this 707 was 12 1/2 minutes.<sup>23</sup> Since the size and power of vortices is a function of speed size weight and configuration, it is clear that the distance which must be allowed behind an aircraft such as the Boeing 747 will have to be greater. Presently London and New York airports have decided to allow 10 miles clearance behind the 747's. This would be approximately 3 minutes apart so it is clear that a much smaller aircraft should not be allowed even this close. Another fact to consider is that presently the busiest airports in the United States have an arrival or departure every 20 seconds or so at peak periods. The greatest problem lies in the fact that turbulence is not visible and it is up to the judgment of the pilots or controller as to where they are or whether they are still in existence. Despite an early decision where a controller was found negligent in allowing a light aircraft to attempt a takeoff even after he had warned it of the existence of turbulence,<sup>24</sup> later decisions have gone in the direction that if the controller has adequately warned the pilot of the existence or

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22. *Hartz v. United States*, 249 F. Supp. 119 (D.C. Ga. 1968).

23. *Lichtenburger v. United States* (supra, footnote #15).

24. *Furmumizo v. United States* (supra, footnote #16).



possible existence of turbulence he will not be judged negligent.<sup>25</sup> But a reversion back to the standards of *Furumizo* is not impossible in any case. The conflicting necessities of avoiding turbulence and moving traffic in and out of busy airfields place a considerable burden on both pilots and controllers, although enough is known of them that procedures can be taken in many cases to avoid them, studies should be encouraged into all possible methods of ascertaining where this turbulence is and if it is in existence.

Each case in the area of weather reporting must be decided on its merits. There is no rule which can fix responsibility on control tower or crew where weather accident occurs.<sup>26</sup> But there are enough cases which have been decided to give some idea of where the bounds of a controller's liability lie as regards the disseminating of weather information. It is stated in *Kullberg v. U.S.*<sup>27</sup> that there is "no duty for approach controller to volunteer weather information except in accordance with Air Traffic Control Procedures Manual, or if he has previously given dangerously inaccurate or misleading information, or perhaps unless he has actual knowledge of hazardous current weather conditions which aircraft may encounter in flight and of which it may not yet be aware."

As can be readily seen the initial broad exclusion from duty is so qualified that the interpretation of this statement by a subsequent court can be very broad indeed.

It is clear that inexact or incomplete information<sup>28</sup> or communicating other than the latest available weather reports where there has been a significant change in the weather<sup>29</sup> will result in a finding of negligence against the Air Traffic Controller. Air Traffic Controllers have also been found negligent when they allowed the pilot of an aircraft to proceed with a takeoff even though they had given the pilot the latest weather information.<sup>30</sup> In *Neff v. U.S.*<sup>31</sup> the tower personnel were found negligent

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25. *Lichtenburger v. United States* (supra, footnote #15).

"where it appears that if the controller had warned the pilot of the possibility of wake turbulence he would have been absolved of negligence in respect to this aspect of the case although there were other aspects of negligence."

*Hartz v. United States* (supra, footnote #17). *Washilko v. United States*, 300 F. Supp. 573, aff.

"That small plane operator had final authority in question of his plane did not absolve airport controller of his duty to warn of possibility of wake turbulence from departing airliner."

26. *Neff v. United States*, 282 F. Supp. 910 (D.C.D.C. 1968).

27. *Kullberg v. United States*, 271 F. Supp. 288 (W.D. Pa. 1964).

28. *Gill v. United States*, 285 F. Supp. 253 (E.D. Tex. 1968).

29. *Ingham v. United States*, 373 F.2d. (2d. Cir.), cert. denied, 389 U.S. 931 (1967).

30. *Stork v. United States*, 278 F. Supp. (SD. Cal. 1967). *Kentlehner v. United States*, 279 F. Supp. 122 (E.D. N.Y. 1967).

31. *Supra*, footnote #21.

in not advising the crew of an aircraft attempting a takeoff of all the weather information which was available to them. Where the controller has communicated the best weather information available to him he was found not negligent in spite of the fact that this information was not correct.<sup>32</sup> When giving weather information the controller is under no duty to ascertain the qualifications of the pilot or whether the aircraft has suitable equipment for such a flight.<sup>33</sup> It must be established that there was a duty of ATC and this duty must be established by the plaintiffs.<sup>34</sup> The plaintiff must also establish that the defendant's action was the proximate cause of the crash.<sup>35</sup> The pilot and not the controller has the responsibility for determining whether or not a given weather situation is suitable for a landing.<sup>36</sup>

If there is any new or significant weather information which comes to the controller's attention which might affect the pilot's decision to take off he must bring this to the pilot's attention even if the pilot has started taxiing.<sup>37</sup>

In *Michelmore v. U.S.*<sup>38</sup> it is stated that the pilot had the responsibility to determine whether it was safe to undertake a proposed flight in light of en route weather.

In a recent case a pilot asked a specialist at a flight service for an altimeter setting and the winds at 5000 feet. The specialist was held negligent in that he did not ask the pilot of his route. This appears to be an extension of the duties of Air Traffic Control and not entirely warranted.<sup>39</sup>

Looking now at the situation in Canada we find it analogous to Great Britain in that there are no reported cases to base accurate findings upon. However, we did learn that an action against an air traffic controller was filed in March, 1969. This case is due to come to court in the very near future. It involved an Apache type aircraft that crashed on April 22, 1968, due to it encountering wake turbulence while on final approach to Vancouver International Airport. The suit for damages is filed under the

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32. *Devere v. True-Flite, Inc.*, 268 F. Supp. 226 (E.D. N.C. 19 1967).

33. *Kulberg v. United States* (supra, footnote #22).

34. *Somlo v. United States*, 274 F. Supp. 827.

35. *Supra*, footnote #29.

36. *Supra*, footnote #29.

37. *Neff v. United States*, 299 F. Supp. 1116 (D.C. Cal. 1969).

38. *Michelmore v. United States*, 299 F. Supp. 1249 (D.C. Tex. 1969).

39. *Black v. United States*, 303 F. Supp. 1249 (D.C. Tex. 1969).

"where pilot asked specialist at flight service station maintained by federal aviation agency about the current altimeter setting and winds at 5000' failure of specialist to enquire of pilot his route and destination and to advise him of severe weather which he would encounter on his course was negligence."

Family Compensation Act 1960 RSBC-c 138, charging negligence on behalf of the pilot or alternatively B.C. Airlines or alternatively the Airport Control Operator.

The DOT<sup>40</sup> in Canada in their operating instructions to their controllers seem to rely heavily on the American Jurisprudence as guidelines for their ATC.<sup>41</sup> The Canadian Statutes like the statutes in the jurisdictions previously mentioned do not specifically define the duties of ATC; they merely state broad categories over which ATC is to have the power to regulate and broadly define the aims of ATC. The controller, therefore, relies on his Air Traffic Control Manual of Operations which is published by Dept. of Transport Air Services Civil Aviation Branch and is under continual revision and amendment.

The Manual of Operations has in some cases in the United States been upheld in that if the controller has fulfilled his obligations imposed in the manual he has been cleared of further liability<sup>42</sup> but in other cases<sup>43</sup> the controller has been found liable for negligence even though he carried out the requirements of the manual. It seems that all that can be counted upon is that if the controller does not fulfill the obligations; in the absence of some outside factor preventing him from doing so, imposed upon him by the manual he will be found liable, and even if he has fulfilled the obligations imposed by the manual he may still be found liable. An example of this happened in the Vancouver area in 1968, when an AT controller followed the procedure as outlined in his manual and gave clearance for a VFR climb to a pilot. The controller in carrying out the procedure as outlined in the Manual of Operations informed the pilot who was requesting the VFR climb of other traffic above him in the area of his intended climb in this case approaching aircraft doing a letdown. There was subsequent near miss.<sup>44</sup> It was approximately seven days before a complaint was filed by one of the pilots involved. The controller was then called before an Incident Investigation Committee at the Regional level. He was not informed why this investigation was called and therefore did not give any testimony on his behalf. He simply answered the questions put to him. A short time after this he was informed that he had been

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40. The Department of Transport of Canada will undergo a major change and become the Ministry of Transport according to a press release by the Honourable Mr. Jamieson 17 February, 1970.

41. —conversion with ATC controllers at Toronto Center.

42. *Kullberg v. United States* (supra, footnote #27).

43. *Furumizo* (supra, footnote #16).

44. Unreported information supplied by J. Jordan formerly CATCA rep. Vancouver area.

suspended without pay for ten days. Grievance procedures were commenced immediately under the Public Service Staff Relations Act by CACTA. Under this act an appeal to an adjudicator is granted for one of the following four reasons:

1. Interpretation of the collective agreement
2. Loss of financial gain
3. Suspension
4. Discharge

An adjudicator, W.S. Martin, a Winnipeg lawyer, was appointed. Apparently Mr. Martin had no knowledge of Air Traffic Control concepts or procedures. On adjudication the suspension was merely reduced to five days. The controllers themselves feel that if the adjudicator had had an understanding of ATC the controller would have been absolved of all liability. Also it is interesting to note that the appeal was granted after the controller was suspended for ten days with loss of pay. Surely the controller should have been informed of the right to appeal by the Incident Investigation Committee and if he elected to appeal the suspension should have been withheld pending the result of that hearing. From this example and from our conversations with ATC personnel it is generally accepted that the Manual has legal status at least as far as the controller is concerned. Under s. 600 of the Air Regulations (*supra*) it is possible that the manual does have legal status. On this point we received no reply from DOT. Surely if the Manual is a legal document it should not be drafted by laymen alone. Presently it is being drafted by Standards and Procedures personnel of the DOT.

As we mentioned the Manual is under continual revision. In our opinion this shows the real need for frequent refresher courses. This need is given recognition on p. 24 Art. 8.01 (B) in the Agreement between the Treasury Board and the CATCA which states that there should be refresher training given to controllers.

-IFR controllers 5 working days each year

-VFR controllers three working days each year.

The controllers have led us to believe that this requirement has generally not been met to this date. It would be interesting to know what the lack of the required refresher courses would mean to a controller involved in an incident.<sup>45</sup>

The new contract also purports to reduce the controller's working hours but the controller is now working a longer week than he was before. The

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45. See attached annex (footnote # 1).

extra hours are composed of "compulsory" overtime. A controller in order to avoid this "compulsory" overtime must submit a letter giving his reasons. In spite of this letter they may still be pressured to work overtime. The reason that overtime is required from controllers is a shortage of qualified personnel. In light of our previous comments on fatigue and the loss of efficiency and skill which results from this which has been substantiated in recent aviation medical studies this overtime is heightening the chance of an incident.<sup>46</sup> Generally the overtime worked is not in the form of extension of shift length but arises with working of days which the controller is normally off. E.G. a controller is scheduled to work six days on and three days off in the Toronto region. Therefore, with overtime a controller is often working seven or more consecutive days. J.D. Lyon, president of CATCA, recently stated in Winnipeg that controllers averaged a 44-hour week and have worked 54 consecutive days. U.S. AT controllers recently accused the U.S. government of recklessly endangering the lives of passengers because the controllers are working overtime when they are mentally and physically unfit to do so. F. Lee Bailey, acting for the American controllers, said that he is confident that a Federal District Court in Washington will order a stop to compulsory overtime.

If an incident occurred involving an AT Controller, who may have been fatigued due to this so-called "voluntary" overtime and was operating at below normal efficiency and skill, surely his position would be prejudiced due to his having accepted this overtime. Therefore it is apparent that there should be an immediate review of the overtime system and an increase in the number of ATC trainees.

The Air Traffic Control Manual of Operations and the Air Regulations are also of further concern due to obscure meaning and legal definition where the controllers believe that they are protected because of the words used say that something is the pilot's responsibility and subsequently is settled in adjudication that it was the controller's responsibility. A good example of the difference between legal and operational interpretation is a recent British Columbia case in which a pilot was fined for low flying. The Air Regulations state that a pilot cannot fly below 2000 feet in the vicinity of aerodrome except when taking off or landing. In this case the pilot while attempting a landing did a missed approach and climbed for another attempt. The judge said the rule stated landings or takeoffs and that this was neither, therefore it did not fall within the exceptions to the rule.

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46. Col. W.R. Turner, MD; published in Canadian Journal of Aviation News, March 1970.

Therefore the pilot was fined. To anyone with a basic understanding of flying procedures this decision is ridiculous because of its vast implications if carried to extremes. If this decision was followed it would mean that once a pilot on a landing approach descended below 2000 feet he would be forced to land or face a fine. It is interesting to note that the Manual of Operation makes continued reference to missed approaches and clearance to overshoot can be granted.

A few of the more realistic examples of ambiguous terms are such terms as "clearances normally shall be issued"<sup>47</sup> and "in the vicinity of the airport".<sup>48</sup> We appreciate that all phrases cannot be defined specifically and that the discretionary nature of the controller's work cannot be completely specified, but surely a phrase such as "in the vicinity of the airport" could be defined to avoid ambiguity. It is also evident that the manual is vague in specifying the controller's duties in transmitting weather information to aircraft.<sup>49</sup>

"... the IFR controller shall also provide to the pilot during descent, any significant information he may receive which may affect the descent, approach or landing of the aircraft."

How can the controller determine what "may affect" or be "significant" to an aircraft e.g. aircraft of the same type may have optional equipment i.e. in possible icing conditions does a controller have to affirm that an aircraft has de-icing equipment. The Canadian controller unlike his American counterpart cannot close the airport for weather conditions, except under two limited conditions which would seldom occur. These conditions being:

- a. High intensity lighting not working properly.
- b. Runway visual markings obscured to the point they would not be clearly visible to the pilot.<sup>50</sup>

and then only for aircraft taking off. This apparently rules out the result in the *Stork* case<sup>51</sup> where the FAA controller was found liable for not preventing the takeoff of an aircraft.

The above examples are brought up to point out that both the rules and regulations governing the movement of aircraft should be written so that their legal and operational interpretations agree. The words used should

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47. Air Traffic Control Manual of Operations S. 311.6.

48. *Supra*, s. 363 (f).

49. *Supra*, s. 381-1.

50. *Supra*, s. 213-3.

51. *Stork v. United States* (*supra*, footnote #25).

be definitive in meaning and consistent in their usage; if possible different words should not be used to mean the same action or freedom of action.

The difference between U.S. and Canadian Air Regulations raises a possibility of liability for controllers on both sides of the border with aircraft transversing national control zone boundaries. The problem is due to the difference of certain aspects of Canadian and American air regulations concerning vertical separation. Under Canadian regulations there is a 1,000 feet vertical separation between aircraft below 23,000 feet, and 2,000 feet vertical separation above 23,000 feet. However, the U.S. uses 1,000 feet vertical separation up to 29,000 feet and 2,000 feet vertical separations above 29,000 feet. This results in aircraft arriving in Canadian airspace at altitudes which are not usable under our regulations with what is known as book separation.<sup>52</sup> This problem is highlighted by the fact that 27,000 feet is a westbound flight level in Canada and eastbound in the U.S. and if it were not for co-operation between controllers of the two countries this could result in aircraft approaching each other at the same altitude at the boundaries of Canadian and U.S. airspace.

The above examples show the numerous hazy and grey areas which exist in Air Traffic Control and how they will affect the liability of the controller in Canada until a body of cases is built up or the rules and regulations are clarified.

The clarification of the rules and regulations will greatly assist the courts and controllers in determining the law. However, in matters of technical complexity the court should be assisted by an assessor. This assessor would possess aeronautical, engineering or other special knowledge and perform similar functions to the Nautical Assessor in Admiralty law.<sup>53</sup> The job of this assessor would be to assist the judge in understanding technical aspects of Aeronautics and not to be an expert witness for either party. Any party to an action should have the right to have an assessor appointed if the judge has not already appointed one.

The controllers are also concerned with coroners' inquests. Apparently

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52. Book separation is the separation in miles that must be maintained between aircraft according to air regulations, whereas when the aircraft are visible on a radar scope it is sufficient if they are kept separate on the scope. "Nautical assessors, experienced shipmasters, or other persons having special knowledge of navigation and nautical affairs, who are called to the assistance of a court of Admiralty, in difficult cases involving questions of negligence, and who sit with the judge during the argument and give their advice upon questions of seamanship or the weight of testimony,"—Black's Law Dictionary, Fourth Edition, West Publishing Co., St. Paul, Minn. 1951.

53. This view has been supported in Shawcross & Beaumont on Air Law, Butterworths, London, 1966, and McNair Law of the Air, Stevens & Sons, London, 1964 at p.386.

they have recently been subpoenaed to testify and have not been made aware of their rights under the relevant evidence acts of their respective Provinces and of Canada.<sup>54</sup> The rights which they are not aware of is their right to invoke these acts to prevent their testimony being used in subsequent proceedings involving them. The controller should be made aware of his rights under these acts.

There is also another aspect of evidence worth mentioning and this is the use of tape recordings. Each ATC unit is equipped with recording devices which may have open microphones allowing background conversation to be recorded. This background conversation has been admitted to evidence in a civil action in B.C. We agree that the use of the primary conversations on a tape is beneficial but use of background conversation can be irrelevant and misleading. An example to show how easily background information can be misunderstood: An airline pilot while in conversation with the controller reported hearing someone in the background saying "my God, you'll kill him". Upon landing the pilot learned from ATC personnel that the conversation was not associated in any way with his controller. However, he admitted that hearing this remark "had scared the hell out of him". Realizing the difficulty of having juries disregard the background noise it would be better to eliminate the recording of this noise.

For protecting the controller's interests we recommend that the incident committee and the adjudication committee adhere to the rule of natural justice that were made by the Ontario Royal Commission Inquiry into Civil Rights.<sup>55</sup> These conditions are:

1. Notice of the intention to make a decision should be given to the party whose rights may be affected.
2. The party whose rights may be affected should be sufficiently informed of the allegations against his interest to enable him to make an adequate reply.
3. A genuine hearing should be held at which the party affected is made aware of the allegations made against him and is permitted to answer.
4. The party affected should be allowed the right to cross-examine parties giving evidence against his interest.
5. A reasonable request for adjournment to permit the party affected to properly prepare and present his case should be granted.

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54. e.g. Canada Evidence Act R.S.C., 1952, C. 307. and the Evidence Act, R.S.O., 1960, C.125.

55. Ontario Queen's Printer 1968 at 137.



6. The Tribunal making the decision should be constituted as it was when the evidence and argument were heard.

We feel that if these rules are adhered to, then a fair procedure is guaranteed in investigating incidents. We also feel that whenever an AT controller is subpoenaed as a witness or a party to an action he be provided with counsel of his own choice. We are aware that the controller is entitled to be represented by a DOT counsel when he is party to an action but not in respect to when he is a witness. We feel that it should be an independent lawyer who represents the controller to safeguard against any problems which may arise due to a conflict of interest of the attorney due to divergent interests of the controller and DOT. When speaking to Mr. Abramson the Legal Branch of the DOT he said "that he could not see that there would be an occasion when the interest of the Department of Transport would be divergent from those of the controller" The reason we recommend that a controller has legal advice when being called as witness is that in the pending case in British Columbia, previously referred, to the controller is being sued as direct result of the testimony he gave at the Coroner's inquest. We recommend that the rules of Natural Justice<sup>56</sup> be embodied in the contract.

The problem of ATC liability regarding wake turbulence is the most difficult to assess. It has been advanced by some controllers that it should be regarded as an act of God. Carried to its extreme this would be impracticable because it would effectively absolve controllers from all liability as regards these phenomena in spite of the fact that they know they exist behind every aircraft for some distance. The problem lies in the fact that these turbulences and vortices vary with weight, speed and size of aircraft and remain in existence for varying lengths of time and cannot be detected or seen by the controller with any current equipment. Therefore, until further studies are carried out and a method is found that can give accurate data on location and strength of these phenomena the best solution we can recommend is concurrent liability of pilot and controller.

Hopefully in the not too distant future systems will be available which will be capable of solving many of the problems facing ATC. A technical study report describing an advanced ATC and navigation system for possible implementation in the 1980's has just been published by FAA of the Department of Transportation in the U.S.<sup>57</sup> The system would provide both air and ground-based collision avoidance systems. A major benefit

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56. *Supra*.

57. Canadian General Aviation News, Feb. 1970.

of the design is the fact that it can be installed in stages, as existing equipment becomes obsolete. Furthermore, it would not become saturated even under traffic loads far beyond anything that can currently be expected for the period of the 1980's. However at the present time in Canada the equipment is not even up to today's standards. Much of Canada is not under ATC radar coverage although all of the southern area of Canada is covered by NORAD military radar but this is not tied into ATC in spite of the fact that it is feasible. It is realized that this military radar may not be optimum for ATC requirements but must be better than no coverage whatsoever.

**A G R E E M E N T**  
**B E T W E E N**  
**T H E T R E A S U R Y B O A R D**  
**A N D**  
**T H E C A N A D I A N**  
**A I R T R A F F I C C O N T R O L A S S O C .**

**C O N V E N T I O N**  
**E N T R E**  
**L E C O N S E I L D U T R E S O R**  
**E T**  
**L ' A S S O C I A T I O N C A N A D I E N N E D U C O N T R Ô L E**  
**D U T R A F I C A É R I E N**

Code: 402/12/69

EXPIRES: September 30, 1971

DATE E'EXPIRATION: 30 septembre 1971

**T A B L E O F C O N T E N T S**

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## ARTICLE 1

### PURPOSE

1.01 The purpose of this Agreement is to establish and maintain harmonious relationships between the Employer, the Association and the employees and to set forth herein the terms and conditions of employment upon which agreement has been reached through collective bargaining.

1.02 The parties to this Agreement share a desire to improve the quality and to increase the efficiency of the Air Traffic Control Service and to promote the well-being of its employees so as to provide safe and efficient services to the public.

## ARTICLE 2

### RECOGNITION AND RELATIONSHIP

2.01 The Employer recognizes the Association as the exclusive bargaining agent for all employees in the bargaining unit as defined in the certificate issued by the Public Service Staff Relations Board on the 28th day of November, 1967, to the Canadian Air Traffic Control Association.

2.02 The Employer agrees to provide all new employees entering the bargaining unit with a copy of this collective agreement and amendments to this collective agreement hereto, and to provide the Association

quarterly with the names of new employees, their geographic location and classification.

2.03 The Employer agrees to recognize and deal with a Collective Bargaining Committee of not more than four (4) employees (or their alternates) for the purpose of:

- (a) negotiating collective agreements between the Employer and the Association, and
- (b) dealing with matters concerning the administration of this Agreement except grievances under Article 5 and matters coming within the scope of Article 21.

2.04 For meetings with the Employer under 2.03(a) members of the Collective Bargaining Committee will be granted leave without pay and for meetings with the Employer under 2.03 (b) members of the Collective Bargaining Committee shall be protected against any loss of normal pay by reason of attendance at such meetings. At meetings with the Employer under 2.03 the Collective Bargaining Committee may be assisted by representatives other than employees.

2.05 The Association shall notify the Employer promptly and in writing of the names of its representatives, the respective dates of their appointment and the names, if any, of those representatives who are being replaced or discontinued.

2.06 The Employer acknowledges the right of the Association to appoint employees as Stewards. The total number of Stewards appointed shall not exceed 125. The Association and Employer jointly shall determine the jurisdiction of each Steward having regard to the plan of organization, the dispersment of employees at the work place, and the administrative structure implied in the grievance procedure.

2.07 The Association recognizes that employees who are representatives of the Association have regular duties to perform in connection with their work for the Employer.

A Steward shall obtain the permission of his immediate supervisor before leaving his work to investigate complaints or grievances of an urgent nature, to meet with local management for the purpose of dealing with these matters and to attend meetings called by management. Such permission shall not be unreasonably withheld.

**ARTICLE 3****MANAGEMENT**

The Association recognizes and acknowledges that the Employer has and shall retain the exclusive right and responsibility to manage and operate the Air Traffic Control Service in all respects including, but not limited to, the following:

(a) to plan, direct and control operations, to determine the methods, processes, equipment and other matters concerning the Air Traffic Control Service, to determine the location of facilities and the extent to which these facilities or parts thereof shall operate;

(b) to direct the working forces including the right to decide on the number of employees, to organize and assign work, to schedule shifts and maintain order and efficiency, to discipline employees including suspension and discharge,

and it is expressly understood that all such rights and responsibilities not specifically covered or modified by this Agreement shall remain the exclusive rights and responsibilities of the Employer.

**ARTICLE 4****CHECK-OFF**

4.01 Subject to the provisions of this Article 4 the Employer will, as a condition of employment, deduct Association membership dues from the monthly pay of all employees in the bargaining unit.

4.02 The provisions of 4.01 will be applied effective the first of the month following the signing of this Agreement and the deductions from pay for each employee in respect of each month will start with the first full month of employment. Where an employee does not have sufficient earnings in respect of any month to permit deduction, the Employer shall not be obligated to make such deduction from subsequent salary.

4.03 The amounts deducted in accordance with 4.01 shall be remitted by cheque to the National Secretary Treasurer of the Association within a reasonable period of time after deductions are made and shall be accompanied by particulars identifying each employee and the amount of the deduction made on his behalf.

4.04 The Employer shall provide a voluntary revocable check-off of premiums payable on health and sickness, and life insurance plans

provided by the Association for its members on the basis of production of appropriate documentation, provided that the amounts so deducted are combined with Association dues in a single monthly deduction.

4.05 The Association agrees to indemnify and save the Employer harmless against any claim or liability arising out of the application of this Article.

## ARTICLE 5

### GRIEVANCE PROCEDURE

5.01 Employee complaints or grievances will be dealt with in accordance with the procedure set forth in this Article.

#### 5.02 *Definitions*

(a) *Days*—All “days” referred to in this procedure are calendar days exclusive of Saturdays, Sundays and designated holidays.

(b) *Immediate Supervisor*—The “immediate supervisor” is the supervisor who has been specified by the Department to deal with a complaint from employees in his work area, and to receive written grievances and process them to the appropriate step in the procedure.

(c) *Management Representative*—The “management representative” is the officer identified by the Employer as an authorized representative whose decision constitutes a step in the grievance procedure.

#### 5.03 *Right to Present Grievances*

Subject to and as provided in Section 90 of the Public Service Staff Relations Act an employee who feels that he has been treated unjustly or considers himself aggrieved by any action or lack of action by the Employer in matters other than those arising from the classification process is entitled to present a grievance in accordance with the procedure provided by this Article except that:

(a) where there is another administrative procedure provided in or under any Act of Parliament to deal with his specific complaint such procedure must be followed, and

(b) where the grievance relates to the interpretation or application of this Collective Agreement or an arbitral award relating thereto he

is not entitled to present the grievance unless he has the approval of and is represented by the Association.

A grievance must be presented not later than twenty (20) days from the day on which the employee was notified, informed or otherwise became aware of the decision, situation or circumstance that is the subject of his grievance.

#### 5.04 *Representation*

An employee may be assisted and/or represented by an authorized representative of the Association when presenting a grievance at any step. Such representative may meet with the Employer to discuss a grievance at each or any step of the grievance procedure.

#### 5.05 *Procedure*

*Complaints*—An employee who has a complaint should attempt to resolve the same through discussion with his immediate supervisor.

#### 5.06 *Step One*

An employee may present his grievance in writing to his immediate supervisor within the twenty (20) day period referred to in 5.03 above. The immediate supervisor shall sign the form indicating the time and date received. A receipted copy will be returned to the employee and a copy forwarded to the management representative authorized to make a decision at Step One. The management representative shall give his decision as quickly as possible and not later than ten (10) days after the day on which the grievance was presented. The decision will be in writing and a copy will be returned, through the immediate supervisor, to the employee.

#### 5.07 *Step Two*

If a decision in Step One is not acceptable to the employee, he may, not later than ten (10) days after receipt of the decision in Step One, or if no decision was received, not later than fifteen (15) days after the last day on which he was entitled to receive a decision, present the written grievance to his immediate supervisor who will sign it indicating the time and date received. A receipted copy will be returned to the employee and a copy forwarded to the management representative authorized to make a decision at Step Two. The management representative shall give his decision as quickly as possible and not later than fifteen (15) days after the grievance was presented. The decision will be in writing and the employee copy will be returned, through the immediate supervisor, to the employee.



5.08 *Step Three*

If a decision in Step Two is not acceptable to the employee, he may, not later than ten (10) days after receipt of the decision in Step Two, or if no decision was received, not later than fifteen (15) days after the last day on which he was entitled to receive a decision, present the written grievance to his immediate supervisor who will sign it indicating the time and the date received. A receipted copy will be returned to the employee and a copy forwarded to the Deputy Minister or his delegated representative authorized to make a decision at Step Three. The Deputy Minister or his delegated representative shall give his decision as quickly as possible and not later than twenty (20) days after the grievance was presented. The decision will be in writing and the employee copy will be returned, through the immediate supervisor, to the employee. The decision of the Deputy Minister or his delegated representative at the final step in the grievance procedure shall be final and binding upon the employee unless the grievance is a class of grievance that may be referred to adjudication.

5.09 *Copy to Association*

Where a grievance relates to the interpretation or application in respect of an employee of a provision of this Collective Agreement or an arbitral award relating thereto, or where the employee has indicated that he is being represented by the Association, a copy of the reply at each step of this procedure shall be forwarded to the authorized representative of the Association.

5.10 *Discharge Grievance*

A grievance resulting from the discharge of an employee shall begin at the final step of the grievance procedure. The written decision of the Deputy Minister or his delegated representative shall be given as quickly as possible and not later than thirty (30) days after the grievance is presented.

5.11 *Time Off to Present Grievance*

An employee may be granted time off during working hours to discuss a complaint or grievance provided prior permission of his immediate supervisor is obtained.

5.12 An employee who is a representative of the Association may, with the permission of his immediate supervisor, be granted time off during working hours to assist an employee in the presentation of a grievance. Where such assistance is given during working hours in the

representative's area of jurisdiction he may be granted time off with pay, and where such assistance is given at locations other than in the representative's area of jurisdiction, leave without pay.

5.13 Employees, and employees who are representatives of the Association, will not be entitled to be paid when a discussion or meeting on a complaint or grievance takes place outside their normal working hours.

5.14 *Permission to Enter Premises or Offices*

A representative of the Association other than an employee may be permitted access to the Employer's premises to assist in the settlement of a grievance, provided the Association has formally identified the representative in writing to the Employer and the prior approval of the Employer has been obtained.

5.15 *Adjudication of Grievances*

Where an employee has presented a grievance up to and including the final step in the grievance procedure with respect to:

- (a) the interpretation or application in respect of him of a provision of this Collective Agreement or an arbitral award relating thereto, or
- (b) disciplinary action resulting in discharge, suspension or a financial penalty,

and his grievance has not been dealt with to his satisfaction, he may refer the grievance to adjudication.

5.16 Where a grievance that may be presented by an employee to adjudication is a grievance relating to the interpretation or application in respect of him of a provision of this Collective Agreement or an arbitral award relating thereto, the employee is not entitled to refer the grievance to adjudication unless the Association signifies in prescribed manner:

- (a) its approval of the reference of the grievance to adjudication; and
- (b) its willingness to represent the employee in the adjudication proceedings.

5.17 *Extension of Normal Time Limit*

The time limits stipulated in this procedure may be extended by mutual agreement between the Management representative and the employee, and the Association representative where the Association is representing the employee.

### 5.18 *Abandonment*

An employee may, by written notice to his immediate supervisor or local officer-in-charge, abandon a grievance at any time during the grievance process. If the grievance in question has been processed with the support of the Association, the Employer will notify the Association that the employee has abandoned the grievance. The abandonment of a grievance shall not prejudice the position of the Association in dealing with grievances of a similar nature.

5.19 Where an employee fails to present a grievance to the next higher step within the prescribed time limits he shall be deemed to have abandoned the grievance.

## ARTICLE 6

### OPERATING IRREGULARITIES

6.01 At any administrative inquiry, hearing or investigation into an operating irregularity, where the Employer considers that the actions of an Air Traffic Controller had a bearing on the operating irregularity or on events and circumstances leading thereto, and the Controller is required to appear at the administrative inquiry, hearing or investigation being conducted into such irregularity, he may be accompanied by an employee representative of his choice in those circumstances where his license may be affected.

6.02 The Controller and his representative may require the Department's representative in charge to state the circumstances leading to the inquiry, hearing or investigation before the Controller is required to answer any questions put to him.

6.03 The Controller and his representative may make representations and direct questions concerning the irregularity or events and circumstances leading thereto, to the Department's representative in charge.

6.04 The Department shall provide the Controller and where applicable, his representative, with a summary report including the findings of the investigation.

6.05 A Controller, his representative or employees called by the inquiry as witnesses will suffer no loss of normal pay while appearing before an administrative inquiry, hearing or investigation.

## ARTICLE 7

## DISCIPLINE

7.01 An employee shall be notified in writing of any disciplinary action, except an oral warning, taken against him by the Employer within a reasonable period of that action having been taken.

7.02 The employer agrees not to introduce as evidence in a hearing relating to disciplinary action any document from the file of an employee, the existence of which the employee was not aware at the time of filing or within a reasonable period thereafter.

## ARTICLE 8

## TRAINING

## 8.01

(a) The Employer shall determine training requirements and the means and methods by which training shall be given and shall provide operating employees with adequate training and instruction on equipment and procedures prior to their introduction and refresher training where appropriate.

(b) In addition to the training referred to in clause 8.01 (a), controllers shall be provided refresher training as follows:

(i) Effective January 1, 1970

IFR Controllers—5 working days each year

VFR Controllers—3 working days each year

(ii) Effective January 1, 1971

IFR Controllers—5 working days each year

VFR Controllers—5 working days each year

(iii) Notwithstanding the above standards which are minimum, where staff permits the Employer will provide refresher training in accordance with part 10 of the Air Traffic Control Manual of Operations.

8.02 The Employer shall provide familiarization flights as follows:

(a) IFR Controllers and Shift Supervisors

One return flight each year involving not more than three (3) days' absence from his normal place of duty. These flights will be

scheduled to include every five years, a long range navigational flight or a visit to a U.S.A. high density Unit.

(b) VFR Controllers and Shift Supervisors and Unit Chiefs

One return flight each year involving not more than two (2) days' absence from his normal place of duty. These flights will be scheduled to include visits to Regional high density towers (Class IV) and to the Area Control Centre with IFR responsibility for his airport. Controllers and Shift Supervisors at Class IV towers will be authorized to visit a U.S.A. high density Control tower every five (5) years.

(c) Trainees at Air Services Training School

As may be arranged in Department of Transport aircraft.

(d) The Employer shall not be responsible for any failure to provide such flights wherever this occurs as a result of an airline declining to provide the necessary transportation.

8.03 If the Employer requires an employee to become proficient in the use of a second language, language training will be paid for by the Employer, and the employee shall not suffer loss of basic salary during such training.

## ARTICLE 9

### SICK LEAVE

9.01 An employee shall earn sick leave credits at the rate of one and one-quarter (1 ¼) days for each calendar month for which he receives pay for at least ten (10) days.

9.02 An employee is eligible for sick leave with pay when he is unable to perform his duties because of illness or injury provided that:

- (a) he has the necessary sick leave credits, and
- (b) he satisfies the Employer of this condition in such manner and at such time as may be determined by the Employer.

9.03 An employee is not eligible for sick leave with pay during any period in which he is on leave of absence without pay or under suspension.

9.04

- (a) Where an employee has insufficient or no credits to cover the granting of sick leave with pay under the provisions of 9.02, sick

leave with pay may, at the discretion of the Employer, be granted for a period of up to fifteen (15) days subject to the deduction of such advanced leave from any sick leave credits subsequently earned.

(b) Unless otherwise informed by the Employer before or during the period of illness or injury, a statement signed by the employee describing the nature of his illness or injury and stating that because of this illness or injury he was unable to perform his duties shall, when delivered to the Employer, be considered as meeting the requirements of Clause 9.02 (b):

(i) if the period of leave requested does not exceed three (3) days, and

(ii) if in the current fiscal year, the employee has not been granted more than seven (7) days' sick leave wholly on the basis of statements signed by him.

## ARTICLE 10

### SPECIAL LEAVE

10.01 An employee shall earn special leave credits up to a maximum of twenty-five (25) days at the following rates:

(a) One half-day ( $\frac{1}{2}$ ) for each calendar month in which he received pay for at least ten (10) days, or

(b) One quarter-day ( $\frac{1}{4}$ ) for each calendar month in which he received pay, but for less than ten (10) days.

As credits are used, they may continue to be earned up to the maximum.

10.02 After the completion of one (1) year's continuous employment in the Public Service, an employee who has the credits available and who gives the Employer at least five (5) days' notice, shall be granted special leave with pay to the extent of his credits but not more than five (5) days, for the purpose of getting married.

10.03 *Bereavement Leave*

For the purposes of this Clause and Clause 10.05, immediate family is defined as father, mother, brother, sister, spouse, child of the employee, father-in-law, mother-in-law and relative permanently residing in the employee's household or with whom the employee permanently resides.

(a) Where a member of his immediate family dies, an employee shall be entitled to bereavement leave for a period of up to four (4) consecutive calendar days and not exceeding the day following the funeral. During such a period, he shall be paid for those days which were not regularly scheduled days of rest for that employee. In addition, he may be granted up to three (3) days' special leave for the purpose of travel.

(b) In special circumstances and at the request of the employee, bereavement leave may be extended beyond the day of the funeral but the total number of days granted must be consecutive and not greater in number than those provided above, and must include the day of the funeral.

(c) An employee is entitled to special leave with pay, up to a maximum of one day in the event of the death of the employee's grand-parent, son-in-law, daughter-in-law, brother-in-law, sister-in-law.

#### 10.04 *Leave for Birth of Child*

At the discretion of the Employer, a male employee may be granted special leave with pay up to a maximum of one day on the occasion of the birth of his son or daughter.

#### 10.05 *Leave for Other Reasons*

At the discretion of the Employer, special leave with pay may be granted when circumstances not directly attributable to the employee, including illness in the immediate family as defined in Clause 10.03, prevent his reporting for duty.

### ARTICLE 11

#### 11.03 **Public Service Staff Relations Board Hearings Pursuant to Section 20 Public Service Staff Relations Act**

(a) Where operational requirements permit, the Employer will grant to an employee who makes a complaint leave with pay if the Public Service Staff Relations Board decides in favour of the employee and leave without pay in all other cases.

(b) Where operational requirements permit, the Employer will grant leave without pay to an employee who acts on behalf of an

employee making a complaint, or who acts on behalf of the Association making a complaint.

(c) The Employer will grant leave with pay to an employee called as a witness by the Public Service Staff Relations Board.

(d) Where operational requirements permit, the Employer will grant leave without pay to an employee called as a witness by an employee or the Association.

#### 11.04 *Arbitration Tribunal and Conciliation Board Hearings*

(a) Where operational requirements permit, the Employer will grant leave without pay to an employee representing the Association before an Arbitration Tribunal or Conciliation Board.

(b) The Employer will grant leave with pay to an employee called as a witness by an Arbitration Tribunal or Conciliation Board and, where operational requirements permit, leave without pay to an employee called as a witness by the Association.

#### 11.05 *Adjudication*

(a) The Employer shall grant, to an employee who is a party, leave with pay if in the opinion of the Employer a decision is made by the adjudicator which significantly alters in favour of the employee management's third level decision and leave without pay in all other cases.

(b) Where operational requirements permit, the Employer will grant leave without pay to the Association representative of an employee who is a party.

(c) The Employer may grant leave without pay to a witness called by an employee who is a party. Such leave without pay shall not be unreasonably withheld.

11.06 Where operational requirements permit, the Employer shall grant leave of absence without pay to officers of the Association to attend to Association business. Employees with similar qualifications may cover shifts for such officers on Association business, provided this arrangement does not infringe on the provisions of this Agreement on the number of consecutive hours or days worked or require the payment of overtime.



## ARTICLE 12

### CALL-IN

When an employee is called in to work overtime that is not contiguous to his scheduled shift, he is entitled to the greater of:

- (a) compensation at the applicable overtime rate, or
- (b) compensation equivalent to four (4) hours' pay at his straight-time hourly rate.

## ARTICLE 13

### HOURS OF WORK

#### 13.01 *Non-Operating Employees*

Thirty-seven and one-half (37½) hours exclusive of lunch periods shall constitute the normal work week for non-operating employees.

#### 13.02 *Operating Employees*

- (a) Effective the first of the month following the signing of this agreement, thirty-seven and a half (37½) hours, inclusive of a mandatory fifteen (15) minute period in which the employee shall prepare himself to assume his duties prior to the commencement of each shift, shall constitute the normal work week for operating employees; except that when hours of work are scheduled on a rotating or irregular basis employees will work thirty-seven and a half (37½) hours per week averaged over a period of time not to exceed seventy (70) days.
- (b) Effective July 1st, 1970, thirty-six (36) hours, inclusive of a mandatory fifteen (15) minute period in which the employee shall prepare himself to assume his duties prior to the commencement of each shift, shall constitute the normal work week for operating employees; except that when hours of work are scheduled on a rotating or irregular basis employees will work thirty-six (36) hours per week averaged over a period of time not to exceed seventy (70) days.
- (c) Where operational requirements permit, the Employer will provide operating employees with meal and relief breaks.
- (d) An employee's days of rest *shall* be consecutive and not less than two (2).

**13.03 Standby**

- (a) A standby duty roster and schedule may be established at Area Control Centres or other locations when, in the opinion of the Employer, it is warranted by operating conditions.
- (b) An employee designated for standby duty shall be available during his period of standby duty at a known telephone number and be able to report for duty as quickly as possible if called.
- (c) An employee on standby duty shall have credited as hours worked in his normal work week, one (1) hour for each shift for which he has been designated as being on standby duty. No credit shall be granted if the employee is unable to report for duty when required.
- (d) An employee on standby who is called into work and who reports for work shall be compensated in accordance with 12.01.

13.04 Except in an emergency, shift schedules shall be posted at least fifteen (15) calendar days in advance in order to provide an employee with reasonable notice as to the shift he will be covering. The shift as indicated in this schedule shall be the employee's scheduled hours to work.

13.05 Provided it will not require the payment of overtime, equally qualified rotating shift employees at the same Air Traffic Control Unit may exchange shifts with forty-eight (48) hours' notice to and permission of the Unit Chief.

13.06 Every reasonable effort shall be made by the Employer:

- (a) not to schedule the commencement of a shift within eight (8) hours of the completion of the employee's previous shift.
- (b) not to schedule shifts of less than seven (7) hours' duration.

13.07 Non-operating employees will submit weekly attendance registration only to report leave or overtime.

13.08 The employer shall not schedule split shifts.

**ARTICLE 14****PAY**

14.01 Except as provided in this Article the terms and conditions governing the application of pay to employees are not affected by this Agreement.

14.02 An employee is entitled to be paid for services rendered at:

- (a) the pay specified in Appendix "A" for the classification of the position to which he is appointed, if the classification coincides with that prescribed in his certificate of appointment, or
- (b) the pay specified in Appendix "A" for the classification prescribed in his certificate of appointment, if that classification and the classification of the position to which he is appointed do not coincide.

14.03 The qualifying period for the payment of acting pay is ten (10) consecutive working days.

14.04 An operating controller who is required to perform for a continuous period of at least two (2) months the full duties of a controller position that has been classified at a level higher than the classification shown in his certificate of appointment, is entitled to be paid for the period he performs the full duties of the higher position, an extra duty allowance equivalent to one increment above the rate of pay he is receiving for each classification level by which the classification of the duties he is performing exceeds that shown in his certificate of appointment but the total remuneration received by a controller shall not exceed the maximum rate of pay established for the classification shown in his certificate of appointment.

14.05 The Employer will notify the Association in writing thirty (30) days in advance of the creation of any new jobs within the bargaining unit or the establishment of a new classification plan for jobs within the bargaining unit.

## ARTICLE 15

### OVERTIME

15.01 Time worked by an employee in excess or outside of his scheduled hours of work shall be considered as overtime.

15.02 For the purpose of this Agreement the following shall be considered as operating employees:

- (a) all shift supervisors and controllers in Area Control Centres and Terminal Control Units;
- (b) all shift supervisors and controllers including Unit Chiefs who are required to perform Control duties in Control Towers;

(c) all shift supervisors and coordinators in the Airspace Reservation Coordination office.

All employees other than those listed above shall be considered non-operating employees.

#### 15.03

(a) For purposes of this Agreement "straight-time hourly rate" means the rate obtained by dividing an employee's annual rate of pay by 1950 in the case of non-operating employees and by 2080 in the case of operating employees.

(b) Effective the first of the month following the signing of this Agreement and for the purposes of this Agreement "straight-time hourly rate" means the rate obtained by dividing an employee's annual rate of pay by 1950 in the case of operating employees.

(c) Effective July 1, 1970 and for the purposes of this Agreement "straight-time hourly rate" means the rate obtained by dividing an employee's annual rate of pay by 1872 in the case of operating employees.

#### 15.04

(a) *Non-operating Employees.* A non-operating employee shall be paid for overtime worked by him at one and one-half (1 ½) times his straight-time hourly rate except that if the overtime is worked by the employee on his second and subsequent day of rest where days of rest are consecutive, the employee shall be paid at two (2) times his straight-time hourly rate. An employee is entitled to overtime compensation for each completed thirty (30) minute period of overtime worked by him. At the discretion of the Employer, a non-operating employee may be granted time off in lieu of overtime at the appropriate overtime rate.

(b) *Operating Employees.* An operating employee shall be paid for overtime worked by him at one and one-half (1 ½) times his straight-time hourly rate except that if the overtime is worked by the employee on his second or subsequent day of rest where days of rest are consecutive, the employee shall be paid at two (2) times his straight-time hourly rate. An employee is entitled to overtime compensation for each completed fifteen (15) minute period of overtime worked by him.

(c) Except as provided in 1503 (a) the Employer will endeavour to

make cash payment for overtime in the month following the month in which the overtime was worked.

(d) Where an employee works in excess of the regularly scheduled hours of work on a day that is a holiday, or on his first working day to which the holiday has been moved, he shall be paid at two (2) times his straight-time hourly rate for all hours worked in excess of his regularly scheduled hours.

15.05 The Employer will endeavour to keep overtime work to a minimum and shall assign overtime equitably among employees who are qualified to perform the work that is required at the location concerned.

15.06 Except in an emergency, no operating employee shall work more than twelve (12) consecutive hours or more than nine (9) consecutive days.

## ARTICLE 16

### HOLIDAYS

16.01 Subject to 16.02 the following days shall be designated holidays for employees:

- (a) New Year's Day;
- (b) Good Friday;
- (c) Easter Monday;
- (d) The day fixed by proclamation of the Governor in Council for celebration of the Sovereign's Birthday;
- (e) Dominion Day;
- (f) Labour Day;
- (g) The day fixed by proclamation of the Governor in Council as a general day of Thanksgiving;
- (h) Remembrance Day;
- (j) Boxing Day;
- (k) One additional day in each year that, in the opinion of the Employer, is recognized to be a provincial or civic holiday in the area in which the employee is employed, or in any area where no such day is so recognized, the first Monday in August.

An employee shall not be paid for the holiday if he is absent without pay on both the working day immediately preceding and the working day following the holiday.

16.02 When a day designated as a holiday under 16.01 coincides with an employee's day of rest, the holiday shall be moved to the employee's first working day following his day of rest.

16.03 When a non-operating employee works on a holiday he shall be paid, in addition to the pay he would have received had he not worked on the holiday, one and one-half (1 ½) times his straight-time hourly rate for all hours worked by him on the holiday.

16.04 Where an operating employee works on a holiday he shall:

- (a) be paid at one and one-half (1 ½) times his straight-time hourly rate for all hours worked by him on the holiday, and
- (b) be granted a day of leave with pay at a later date in lieu of the holiday.

16.05

- (a) The designated holidays in a fiscal year shall be anticipated to the end of the year and "lieu day" credits established.
- (b) Lieu days may be granted as an extension to vacation leave or as occasional days and shall be charged against the lieu day credits on the basis of one shift for one day.
- (c) Consistent with operational requirements of the service and subject to adequate notice, the Employer shall make every reasonable effort to grant lieu days at times desired by the employee.
- (d) Any leave granted under the provisions of this clause in advance of holidays occurring after the date of an employee's separation or commencement of retiring leave or after he becomes subject to clause 13.01 shall be subject to recovery of pay.

## ARTICLE 17

### VACATIONS

17.01 An employee who has earned at least ten (10) days' pay for each calendar month of a fiscal year shall earn vacation leave at the following rates:

- (a) three (3) weeks per fiscal year if he has completed less than twelve (12) years of continuous employment;
- (b) four (4) weeks per fiscal year if he has completed twelve (12) years of continuous employment, except that an employee who has

received or is entitled to receive furlough leave shall accumulate three (3) weeks only per fiscal year between his twentieth (20th) and twenty-fifth (25th) years of continuous employment.

17.02 An employee who has not received at least ten (10) days' pay for each calendar month of a fiscal year will earn vacation leave at one-twelfth (1/12) of the rate referred to in 17.01 for each calendar month for which he receives at least ten (10) days' pay.

17.03 An employee earns but is not entitled to receive vacation leave with pay during his first six (6) months of continuous employment.

17.04 Subject to operational requirements the Employer shall make every reasonable effort to grant an employee his vacation leave during the fiscal year it is earned. Where in any fiscal year an employee has not been granted all of the vacation leave credited to him, the unused portion of his vacation leave shall be carried over into the following fiscal year.

17.05 Employees shall take vacation leave on the basis of the schedule being worked.

17.06 The vacation year extends from April 1 to March 31 and vacation may be scheduled by the Employer at any time during this period.

Local representatives of the Association shall be given the opportunity to consult with representatives of the Employer on vacation schedules. Consistent with efficient operating requirements the Employer shall make every reasonable effort to schedule vacations in a manner acceptable to employees.

17.07 Where a day that is a designated holiday for an employee falls within a period of vacation leave with pay, the holiday shall not count as a day of vacation leave.

17.08 Where, in respect of any period of vacation leave, an employee:

- (a) is granted bereavement leave, or
- (b) is granted special leave with pay because of illness in the immediate family, or
- (c) is granted sick leave on production of a medical certificate,

the period of vacation leave so displaced shall either be added to the vacation period, if requested by the employee and approved by the Employer, or reinstated for use at a later date.

17.09 Where an employee dies or otherwise terminates his employment

after a period of continuous employment or not less than thirty (30) days but not more than six (6) months, he or his estate shall, in lieu of earned vacation leave, be paid an amount equal to four per cent (4%) of the total of the pay and compensation for overtime received by him during his period of employment.

17.10 Subject to 17.11, when an employee who has completed more than six (6) months of continuous employment is about to terminate his employment, the Employer shall grant the employee any vacation leave earned but not used by him before the employment is terminated.

17.11 When the employment of an employee who has completed more than six (6) months of continuous employment is terminated by reason of:

- (a) death,
- (b) discharge, or
- (c) a declaration that he has abandoned his position

the employee or his estate shall, subject to 17.12, in lieu of earned but unused vacation leave, be paid an amount equal to the product obtained by multiplying the number of days of earned but unused vacation leave by the daily rate of pay applicable to the employee immediately prior to the terminating of his employment.

17.12 An employee whose employment is terminated by reason of a declaration that he abandoned his position is not entitled to receive the payment referred to in 17.11, unless he requests it within six (6) months following the date upon which his employment is terminated.

#### 17.13 *Recall from Vacation Leave*

Where, during any period of vacation leave, an employee is recalled to duty, he shall be reimbursed for reasonable expenses, as normally defined by the Employer, that he incurs:

- (a) in proceeding to his place of duty, and
- (b) in returning to the place from which he was recalled if he immediately resumes vacation upon completing the assignment for which he was recalled,

after submitting such accounts as are normally required by the Employer.

17.14 The employee shall not be considered as being on vacation leave during any period in respect of which he is entitled under Clause 17.13 to be reimbursed for reasonable expenses incurred by him.



## ARTICLE 18

### SEVERANCE PAY

#### 18.01 *Resignation*

Subject to 18.02, an employee who has ten (10) or more years of continuous employment is entitled to be paid on resignation from the Public Service severance pay equal to the amount obtained by multiplying half of his weekly rate of pay on resignation by the number of completed years of his continuous employment to a maximum of twenty-six (26), less any period in respect of which he was granted severance pay, retiring leave or a cash gratuity in lieu of retiring leave by the Employer.

#### 18.02 *Retirement*

On termination of employment an employee who is entitled to an immediate annuity under the Public Service Superannuation Act shall be paid severance pay equal to the product obtained by multiplying his weekly rate of pay on termination of employment by the number of completed years of his continuous employment to a maximum of twenty-eight (28), less any period in respect of which he was granted severance pay, retiring leave or a cash gratuity in lieu of retiring leave by the Employer.

## ARTICLE 19

### USE OF EMPLOYER FACILITIES

19.01 The Employer may permit the Association to use the Employer's premises outside the working hours of the employees for conducting meetings of their members, which are not related to membership recruitment, where refusal to grant permission would make it difficult for the Association to convene a meeting. The Association shall insure the orderly and proper conduct of its members who attend such meetings and agrees to be responsible for leaving facilities in good order after use.

19.02 Reasonable space on bulletin boards will be made available to the Association for the posting of official Association notices in convenient locations as determined by the Employer. Notices or other material shall require the prior approval of the Employer, except notices of meetings of their members and elections, the names of Association representatives and social and recreational affairs. Notices or other material pertaining to political matters or membership recruiting, or material which may be interpreted to reflect discredit upon the integrity or

motives of the Employer, representatives of management, other employee organizations, or individuals shall not be posted.

## ARTICLE 20

### LOSS OF LICENSE FOR MEDICAL REASONS

20.01 Where an employee who has been denied renewal of his Air Traffic Control license on the grounds that he does not meet the prescribed medical standards applies for a review of his case to the Civil Aviation Medical Advisory Panel, the Employer will reimburse the employee for the cost of any additional medical examinations which he is required to undergo.

20.02 The Employer will continue past practice in giving all reasonable consideration to continued employment in the Public Service of a Controller who loses his license for medical reasons.

20.03 If a Controller who has lost his license for medical reasons is offered alternate employment in the Public Service at another geographic location, the Employer shall bear the cost of removal expenses in accordance with then current Employer Regulations.

## ARTICLE 21

### ASSOCIATION-MANAGEMENT CONSULTATION

21.01 The Employer and the Association recognize that consultation and communication on matters of mutual interest outside the terms of the Collective Agreement should promote constructive and harmonious Employer-Association relations.

21.02 The Employer will recognize Association Committees for the purpose of consulting with management as follows:

- (a) An Association National Committee consisting of not more than five (5) employee representatives of the Association;
- (b) Association Regional Committees consisting of not more than three (3) employee representatives, for each Air Services Region and the Ottawa Headquarters of the Air Traffic Control Division of the Department of Transport;
- (c) By agreement of the parties and where circumstances warrant, Association Local Unit Committees, consisting of not more than

three (3) employee representatives, may be established for the purpose of consultation with local management.

21.03 It is recognized that a subject suggested for discussion may not be within the authority or jurisdiction of either the management or association representatives. In these circumstances, consultation may take place for the purpose of providing information, discussing the application of policy or airing problems to promote understanding, but it is expressly understood that no commitment may be made by either party on a subject that is not within their authority or jurisdiction, nor shall any commitment made be construed as to alter, amend, add to, or modify the terms of this agreement.

21.04 Meetings with Association Regional Committees and with the Association National Committee shall take place at least every six (6) calendar months. By agreement of the parties the frequency of meetings may be increased. The frequency of meeting with Association Local Unit Committees shall be determined by mutual agreement.

21.05 All meetings shall be held on the Employer's premises at a time and for a duration determined by mutual agreement

21.06 Full-time employees forming the continuing membership of Association Committees shall be protected against any loss of normal pay by reason of attendance at such meetings with management, including reasonable travel time where applicable.

21.07 A designated representative of Association Committees and management shall exchange written agenda for a meeting as early as possible prior to the effective date of the meeting, but in any case normally not less than fifteen (15) calendar days in advance.

## ARTICLE 22

### TECHNOLOGICAL CHANGE

At least ninety (90) days before the introduction of any major technological change which will result in a reduction of staff, the Employer shall notify the Association of the proposed change.

## ARTICLE 23

### WORKING CONDITIONS AND SAFETY

The Employer will continue to make provision for the safe and healthful working conditions of employees and in so far as is feasible,

having regard to building and space limitations, will provide proper accommodation for employees to have their meals and keep their clothes. The Association agrees to cooperate fully in the prevention of accidents to employees and in the enforcement of safety rules.

#### ARTICLE 24

##### PRESENT CONDITIONS AND BENEFITS

Wherever possible, the Employer shall consult with representatives of the Association, at the appropriate level, about contemplated changes in conditions of employment or working conditions not governed by this Agreement.

#### ARTICLE 25

##### PRINTING OF AGREEMENT

The Employer shall arrange for the printing of this Collective Agreement and amendments to this Collective Agreement hereto, and provide the Association with sufficient copies for distribution to employees in the bargaining unit.

#### ARTICLE 26

##### STATE SECURITY

Nothing in this Agreement shall be construed to require the Employer to do or refrain from doing anything contrary to any instruction, direction or regulations given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.

#### ARTICLE 27

##### SHIFT PREMIUM

27.01 Operating employees and Instructors will receive a shift premium of one dollar (\$1.00) for each shift worked on the 1600 to 2400 evening shift and a premium of one dollar and fifty cents (\$1.50) for each shift worked on the 0001 to 0800 night shift.

27.02 An employee who in the observance of a special shift schedule works four (4) or more hours during the period of either of the

aforementioned shifts shall be paid the appropriate shift premium for such shift.

## ARTICLE 28

### TRAVEL

When, in the performance of his duties, an employee is authorized by the Employer to travel by authorized means of transport, time necessarily spent by the employee in such travel shall be compensated for as time worked. At the discretion of the Employer, such travel may be compensated for with equivalent time off.

## ARTICLE 29

### APPLICATION, DURATION, MODIFICATION

9.01 The provisions of this Agreement apply to the Association, employees and the Employer

29.02 Unless otherwise expressly stipulated, this Agreement shall be in effect from the date it is signed until midnight September 30, 1971 and, in the event that any law passed by Parliament renders null and void any provision of this Agreement, the remaining provisions of the Agreement shall remain in effect for the term of Agreement.

29.03 This Agreement may be amended by mutual consent.

29.04 Notwithstanding the provision of the term of this Agreement under 29.02, this Agreement shall remain in effect during the negotiations for its renewal and until a new Agreement becomes effective.

29.05 Except as otherwise provided in this Agreement, the provisions of this Agreement shall be implemented within ninety (90) days of the signing of this Agreement.

SIGNED AT OTTAWA, this \_\_\_\_\_ day of the month of \_\_\_\_\_ 1969.

THE TREASURY BOARD  
OF  
CANADA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE CANADIAN AIR TRAFFIC  
CONTROL  
ASSOCIATION

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## APPENDIX "A"

## RATES OF PAY

The annual rates of pay shown below shall be effective on the dates indicated.

A—July 1, 1969

B—July 1, 1970

Level					
AI-1					
From:	\$ 6138	6429	6720	7012	7304
A	6568	6879	7190	7503	7815
B	6962	7292	7621	7953	8284
AI-2					
From:	7312	7660	8008	8356	8702
A	7824	8196	8569	8941	9311
B	8293	8688	9083	9477	9870
AI-3					
From:	8338	8734	9131	9529	9926
A	8922	9345	9770	10196	10621
B	9457	9906	10356	10808	11258
AI-4					
From:	9415	9865	10313	10761	11210
A	10074	10556	11035	11514	11995
B	10678	11189	11697	12205	12715
AI-5					
From:	10822	11341	11853	12368	12884
A	11580	12135	12683	13234	13786
B	12275	12863	13444	14028	14613

AI-6

From:	12071	12620	13168	13717
A	12916	13503	14090	14677
B	13691	14313	14935	15558

AI-7

From:	12804	13386	13968	14550
A	13700	14323	14946	15568
B	14522	15182	15843	16502

AI-8

From:	13537	14153	14768	15383
A	14485	15144	15802	16460
B	15354	16053	16750	17448

AI-9

From:	14325	14974	15625	16276
A	15328	16022	16719	17415
B	16248	16983	17722	18460

Air Traffic Controller-in-Training

From:	\$4200—\$4800 (increments \$75)
A	4600— 5200 (increments \$75)
B	5900— 5500 (increments \$75)



CANADA

Ottawa 4, December 22, 1969

Mr. J. D. Lyon,  
President,  
Canadian Air Traffic Control Association,  
Room 305, 56 Sparks Street,  
Ottawa 4, Ontario.

Dear Mr. Lyon:

This is to confirm an understanding reached during the current negotiations in respect of loss of license for medical reasons.

Provided a Controller has performed active control duties for a period of five (5) years and subsequently has been removed from active control duties for medical reasons, it was agreed that the individual involved would suffer no loss of his basic salary for a minimum period of one year from time of removal from active control duties.

We trust that this assurance will satisfy your requirements:

Yours very truly,

M. L. Bolger,  
Group Chief,  
Staff Relations Division.

Received and accepted by

J. D. Lyon,  
President,  
Canadian Air Traffic Control Association.

CANADA

Ottawa 4, December 22, 1969

Mr. J. D. Lyon,  
President,  
Canadian Air Traffic Control Association,  
Room 305, 56 Sparks Street,  
Ottawa 4, Ontario.

Dear Mr. Lyon:

This is to confirm an understanding reached during the current negotiations in respect of the provision of legal assistance to Air Traffic Controllers in certain situations.

“If an air traffic controller is named as a defendant in an action for damages brought by a person who claims to have suffered loss or injury as a result of the performance of his duties by the air traffic controller, the employer agrees to provide legal counsel to advise and represent the air traffic controller in respect of such action.”

Yours very truly,

M. L. Bolger,  
Group Chief,  
Staff Relations Division.

Received and accepted by

J. D. Lyon,  
President,  
Canadian Air Traffic Control Association.

CANADA

Ottawa 4, December 22, 1969

Mr. J. D. Lyon,  
President,  
Canadian Air Traffic Control Association,  
Room 305, 56 Sparks Street,  
Ottawa 4, Ontario.

Dear Mr. Lyon:

This letter will confirm an understanding reached during the current Air Traffic Control negotiations in respect of the early retirement section of the Air Traffic Control Occupational Study Report.

It was agreed that the Association would have access to the early retirement section of the Occupational Study Report and, if there is contained in that section a recommendation for a further study of early retirement, the Association would be invited to consult with management prior to and throughout such further study in the same manner as in the Occupational Study.

Yours very truly,

M. Bolger,  
Group Chief.

Received and accepted by

J. D. Lyon,  
President,  
Canadian Air Traffic Control Association.

CANADA

Ottawa, December 22, 1969

Mr. J. D. Lyon,  
President,  
Canadian Air Traffic Control Association,  
56 Sparks Street,  
Suite 305,  
Ottawa.

Dear Mr. Lyon:

You will recall that during the negotiation of a second  
Collective Agreement with the Canadian Air Traffic Control  
Association, the subject of commuting allowances was discussed.  
This letter is to confirm that the existing allowances will continue to  
be paid until increases, decreases, additions and deletions are  
resolved through the consultation process at the National Joint  
Council.

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Yours sincerely,

M.L. Bolger  
Group Chief,  
Staff Relations Division.

Received and accepted by

J. D. Lyon,  
President,  
Canadian Air Traffic Control Association.

CANADA

Ottawa 4, December 22, 1969

Mr. J. D. Lyon,  
President,  
Canadian Air Traffic Control Association,  
56 Sparks Street,  
Suite 305,  
Ottawa 4, Ontario.

Dear Mr. Lyon:

This is to confirm an understanding reached in the current negotiations with the Air Traffic Control Group, that employees who are qualified to receive four (4) weeks vacation leave as of the date of signing of this collective agreement, in accordance with Article 17 of the Collective Agreement, shall be eligible for four (4) weeks vacation during the 1969-1970 vacation year.

Yours very truly,

M. L. Bolger  
Group Chief,  
Staff Relations.

Received and accepted by

J. D. Lyon,  
President,  
Canadian Air Traffic Control Association.

**REVISED CONSTITUTION AND BY-LAWS  
AS ACCEPTED AND ADOPTED AT THE 1967 CONVENTION****BY-LAWS****By-Law 1—Name**

- 1.1 The name of the Association shall be the "CANADIAN AIR TRAFFIC CONTROL ASSOCIATION", hereinafter referred to as the ASSOCIATION.

**By-Law 2 — Objects**

- 2.1 The objects of the Association shall be:
  - to promote the welfare of members of the Association;
  - to promote the efficiency and conduct of members with a view to improving the status of the Air Traffic Control Services;
  - to promote safety and efficiency in the control of Air Traffic.

**By-Law 3 — Seal**

- 3.1 The seal of the Association shall be of such form as prescribed by the National Council and shall have the words the CANADIAN AIR TRAFFIC CONTROL ASSOCIATION endorsed thereon.
- 3.2 All bonds, debentures and sealed instruments shall be attested under the hand of two officers designated by the National Council.

**By-Law 4 — Official Publication**

- 4.1 Official Organ—a newsletter shall be published as the official organ of the Association.

**By-Law 5 — Head Office**

- 5.1 The head office of the Association shall be situated at the city of Ottawa, in the province of Ontario.

**By-Law 6 — Membership**

- 6.1 Types of Membership: provision shall be made for active members, associate members, corporate members and honorary members.
- 6.2 Active Members: Active membership shall be granted only on election by the National Council.
- 6.2.1 All active members shall be entitled to all the rights and privileges of the Association, including the holding of any elective office, serving on committees and voting on any matter affecting the Association, as hereinafter provided.
- 6.3 Associate Members: Any person not qualified for active membership and wishing to support the aims and objects of the

Association may be granted an associate membership but shall not be entitled to hold any elective office or to vote in the Association.

- 6.4 **Corporate Members:** Any corporation, company, organization or group of individuals interested in the aims and objects of the Association shall be eligible for corporate membership. These members shall have no vote in the Association.
- 6.5 **Honourary Members:** The Association shall have the authority to grant honorary membership.
- 6.6 Any member who wilfully acts contrary to the aims and objects of the Association shall be expelled, suspended, or censured. Said member shall have the right of appeal.
- 6.7 **Resignation:** Any member wishing to resign must submit a written resignation.

**By-Law 7 — Fees**

- 7.1 Fees shall be established by the annual meeting.
- 7.1.1 Honourary members shall be exempt from payment of fees.
- 7.2 Arrears of 60 days in payment of fees shall be sufficient cause for the removal of the name of the defaulting member from the rolls of the Association.
- 7.3 A member in arrears may be reinstated on payment of arrears or may be re-elected after removal from the rolls provided the National Council directs that arrears be written off.
- 7.4 A member in arrears as a result of a lengthy illness shall, notwithstanding, be considered a member in good standing of this Association and thus retain all rights and privileges.

**By-Law 8 — Board of Directors**

- 8.1 **Authority:** The Board of Directors, herein referred to as the National Council, shall be the governing body of the Association and shall be responsible to the membership through the annual meeting or any special general meeting called in accordance with these By-Laws. Members of the National Council shall serve without remuneration.
- 8.2 **Composition.**
  - 8.2.1 **Members:** The following shall be the elected members of the National Council—
    - President
    - Vice-Presidents
    - Secretary-Treasurer
    - Regional Councillors
  - 8.2.2 **Exofficio Member:** The immediate past president for the two years following his term of office.

### 8.3 Duties of the National Council

8.3.1 **General:** The National Council shall have those duties and responsibilities are defined in the By-Laws and such additional duties as are assigned by the annual meeting or any special general meeting

8.3.2 **Limitations:** The National Council shall take no action to amalgamate or enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concessions or otherwise, with any company or any society, firm or person, carrying on or engaged in or about to carry on or engage in any business or transaction that the Association is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the Association; and to lend money to, guarantee the contracts of, or otherwise assist any such company, society, firm or person, and to take or otherwise acquire shares and securities of any such company, and to sell, hold or otherwise deal with the same;

to enter into any arrangements with any government or authority, municipal, local or otherwise, that may seem conducive to the Association's objects, or any of them, and to obtain from any such government or authority any rights, privileges and concessions that the Association may think it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions

unless such action is within the objects or powers of the Corporation and has been sanctioned by a majority of all active members.

The National Council may expend such monies as it considers necessary in conducting the normal affairs of the Association, but shall not incur any expenditure for extraordinary purposes unless authorized by the annual meeting or special general meeting.

8.3.3 **Head Office:** The National Council shall appoint such staff as may be required to conduct the affairs of the Association. The National Council may appoint a managing director who shall, subject to the direction of the president, oversee and direct employees of the head office and perform such other duties as may be assigned by the National Council.

### 8.3.4 Appointments

8.3.4.1 The National Council shall have the power to appoint or nominate representatives to government committees and other national or international bodies whose activities and interests are related to those of the Association.



8.3.4.2 The National Council shall have the power to appoint chairmen of special and standing committees of the Association.

8.3.4.3 Reports of Activities: The National Council shall render to the annual meeting, through its chairman of committees, reports of the committees and activities of the Association, and through its secretary-treasurer, the financial statement and auditors report for the previous year, and a proposed budget for the forthcoming year.

8.3.4.4 The National Council shall recommend to the annual meeting auditors for appointment for the ensuing two years.

**By-Law 9 — National Executive and Officers**

9.1 National Executive: The National Executive, herein called the Executive, shall consist of the president, two vice-presidents and the secretary-treasurer.

9.2 Duties: The executive shall take such action as will ensure that the policies established at the annual meeting and by the National Council will be effected.

9.3 President: The president of the Association shall call meetings of the National Council or the executive. He shall also call special general meetings of the Association as provided in the By-Laws. He shall preside at such meetings and shall perform all the usual duties of his office.

9.4 Vice-Presidents: In the absence of the president, the chair shall be occupied by a vice-president, or in the absence of a vice-president, by another member of the National Council. The vice-presidents shall perform such other duties as may be required by the president or members of the National Council.

9.5 Secretary-Treasurer: The secretary-treasurer shall be responsible for all records of the Association related to membership, finance, meetings of the National Council, Executive, annual and special general meetings. He shall make such reports and returns as are required. He shall have custody of the seal of the Association.

**By-Law 10 — Special or Standing Committees**

10.1 Formation: It shall be the duty of the National Council to form standing or special committees as may be necessary in the opinion of the National Council or Executive. These committees shall report to the National Council. The president and secretary-treasurer shall be ex officio members of the appropriate committees.

10.2 Representation: At least one representative of members employed in a specialized type of employment shall be a member of any

committee or delegation that may be appointed to deal with matters related specifically to that type of employment.

**By-Law 11 — Branches**

- 11.1 The National Council shall make provision for branches within each of the Flight Information Regions, hereinafter known as FIR's.
- 11.2 Each FIR having at least twenty-five (25) members in good standing shall be represented by a councillor on the National Council of the Association.
- 11.3 Any geographical location having at least five (5) members in good standing may be granted authority by the regional councillor to establish a branch of the Association. Members at locations having less than five (5) members shall be assigned to a branch within the appropriate FIR. Isolated members on duty outside Canada will be assigned to the branch serving the location of the president for record purposes.
  - 11.3.1 Each branch shall have a branch council of elected officers who shall be elected by the branch members. Such officers shall be employed at the geographical location of the branch.
  - 11.3.2 Duties of a Branch Council: The branch council shall take such action as will ensure that the directives established by the annual meeting, the National Council and branch resolutions will be effected.

**By-Law 12 — Terms of Office, Nominations, Eligibility for Office**

- 12.1 Terms of Office
  - 12.1.1 The term of office of the national executive shall commence at the close of the annual meeting at which they are elected and shall last for two years or until their successors take office.
  - 12.1.2 The term office for regional councillor shall commence on the first day of March and shall last for two years or until their successors take office.
  - 12.1.3 The term of office for a branch council shall commence on the first day of January and shall last for one year or until their successors take office.
  - 12.1.4 In the event of a special election for any office, the elected nominee shall serve the unexpired term of office of his predecessor.
- 12.2 Nominations
  - 12.2.1 At least three months prior to the commencement date of any term of elected office the national secretary-treasurer shall call upon the appropriate branches and members-at-large for nominations for that office.

- 12.3 Eligibility for Office
- 12.3.1 Only active members in good standing shall be eligible to hold any elected office.
- 12.3.2 Eligibility for National Council Office: Nominees must have at least one year's membership in good standing at the closing date for nominations.
- 12.3.3 Good Standing: Good standing shall be continuous paid-up membership during the preceeding qualifying period of eligibility.

**By-Law 13 — Elections**

- 13.1 All elections of officers shall be by secret ballot.
- 13.2 Election of the National Executive: The national executive shall normally be elected at an annual meeting. Only accredited representatives at an annual meeting shall be eligible to vote for the president, vice-presidents and secretary-treasurer of the Association.
- 13.3 Election of Regional Councillors: Only active members within an FIR shall be eligible to vote for a regional councillor to represent such FIR.
- 13.4 Election of Branch Councils: The council of a branch shall be elected by the active members of such branch.
- 13.5 Time of Elections: Elections shall normally be held at such time as to allow the successful nominee to commence office as in By-Law 12.1.
- 13.6 Special Elections: In the event of the resignation from office, removal from office, death or incapacity of any elected officer of the Association, the executive shall, on receipt of evidence to this effect declare the office vacant and call a special election.
- 13.6.1 A special election for national executive office shall be conducted by a special general meeting.
- 13.7 A member may hold only one elected office at any one time.
- 13.8 Removal from Office: Any elected member may be removed from office for cause. A member removed by virtue of this By-Law shall have the right of appeal.

**By-Law 14—Meetings**

- 14.1 Annual Meeting: The annual meeting shall be held at a time specified by the National Council. Notwithstanding the foregoing, it shall not be held later than the 31st of May in each year.
- 14.2 Special General Meeting: A special general meeting shall be held when required by the By-Laws or whenever deemed necessary by the National Council.

- 14.3 The National Council shall meet at least once in each year. Additional meetings may be held on the call of the president or in his absence on the call of the vice-president, acting as president, or upon the written request of four or more members of the National Council.
- 14.4 The National Council shall meet on the day following the annual meeting. The president may call additional meetings of the council as required.
- 14.5 Branch meetings shall be held as required.
- 14.6 Representation at Meetings
- 14.6.1 As the nature of the Air Traffic Control Service makes it impossible for all members to attend any meeting of the Association, voting at annual meetings shall be representative. The following shall attend annual meetings of the Association:
- The National Council  
The Managing Director  
and normally accredited branch representatives  
as follows:
- up to 30 members—1 representative  
and one additional representative for each additional  
30 members or portion thereof.
- 14.6.2 Special General Meeting: At a special general meeting each branch shall cast the same number of votes as their number of accredited representatives at an annual meeting.
- 14.7 Quorums
- 14.7.1 A quorum at any session of an annual meeting shall be at least 60% of the accredited representatives.
- 14.7.2 A quorum of any session of a national council meeting shall be at least 60% of the National Council.
- 14.7.3 A quorum of any session of a branch meeting shall be at least 20% of the branch members or 3 members of a branch, whichever is greater and shall include the branch chairman or vice-chairman.
- 14.8 Voting
- 14.8.1 A member of the National Council shall not be represented by proxy at any meeting of the National Council.
- 14.8.2 Voting at annual meetings of the Association shall be restricted to accredited representatives, at National Council meetings to members of the National Council.
- 14.8.3 All references in these By-Laws to required voting majorities shall mean a majority of all those eligible to cast a vote, whether or not the vote is cast.

- 14.9 **Invitees:** Committee Chairmen who are not members of the National Council, and the managing director may be invited to attend meetings and may take part in any discussion, but they shall not have the power to vote or to propose motions.
- 14.10 **Discussion:** All members of the Association shall have the privilege of taking part in any discussion at any Association meeting. Part of each annual meeting shall be devoted to a closed session.
- 14.11 **Rules of Order:** All meetings of the Association shall be conducted in accordance with the Parliamentary Rules of Order, insofar as such rules are not contrary to the By-Laws, Policy Manual, or any standing procedure of the Association.

**By-Law 15 — Regulations**

- 15.1 Changes in the Constitution and By-Laws require approval by a two-thirds (2/3) majority of all accredited representatives at an annual meeting, but any changes so approved shall not become effective until approved by the Secretary of State of the Government of Canada, and where applicable, any necessary supplementary letters of patent have been issued.
- 15.2 Regulations covering procedures for obtaining the objects of the Association and for applying these By-Laws shall be established by the annual meeting shall be incorporated into a manual to be known as the policy manual. Such regulations must be made in accordance with the Constitution and By-Laws. Changes in the policy manual shall require approval by a two-thirds (2/3) majority of all accredited representatives at an annual meeting.

