

## Feds Preparing to Raise the Foreign Ownership Cap to 49% from 25%

Parliament recently passed an amendment as part of its January '09 budget package that will raise the foreign-ownership cap on Canadian carriers to 49% from 25%. Amendments to the Canadian Transportation Act that contemplate the increase were passed in March although associated regulatory changes are unlikely to be passed until later this summer.

The changes aimed primarily at bolstering airline travel, the government hopes will bolster competition, and pave the way for even greater liberalization of air travel across the Atlantic.

For helicopter operators, the change will provide some relief from more strict Canadian control requirements currently being applied by the CTA and have the potential to provide Canadian operators with new sources of capital. Ironically however, while the change will make the *de jure* test of ownership easier to comply with, it will make the *Defacto* test more problematic since naturally foreign interests will expect to exert greater control (operationally or otherwise) over an enterprise in which they have a 49% interest.

There has been some effort on the part of Transport Canada recently to re-examine the role of the CTA in the process of assessing Canadian ownership and the tests that are currently being applied by the agency, although it is still unclear where this is all going. HAC believes that the CTA will move to consider a test of more *operational control and financial control*, rather than the current test which considers if the foreign interest will suffer a loss in the event that company fails.