

1983 BILL 91

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 91

PACIFIC WESTERN AIRLINES ACT

HON. MR. M. MOORE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 91

1983

PACIFIC WESTERN AIRLINES ACT

(Assented to , 1983)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) “agent”, in relation to Her Majesty in right of Alberta, or in right of Canada or in right of a province other than Alberta, means an agent of Her Majesty in any such right and includes a corporation controlled by Her Majesty in any such right, but does not include

(i) a public trustee or other person performing a function or duty in connection with the administration or management of an estate or property of an individual, or

(ii) a corporation that is the governing body of a university or other educational institution or of a hospital;

(b) “Board” means the board of directors of Pacific Western;

(c) “by-laws” means the by-laws of Pacific Western;

(d) “corporation” means any corporation however incorporated and includes an association, partnership or other unincorporated organization;

(e) “government” means

- (i) Her Majesty in right of Canada or of a province, or
- (ii) the government of a foreign state or of a political subdivision of a foreign state;
- (f) “limited share” means a share of Pacific Western other than a voting share;
- (g) “Pacific Western” means Pacific Western Airlines Corporation, a corporation continued under the *Business Corporations Act*;
- (h) “person” includes an individual or group of individuals, a partnership, a trust, a corporation or a government;
- (i) “shareholder”, with reference to a voting share or limited share, means a person who, according to the securities register of Pacific Western, is the holder of the share and a reference in this Act to the holding of a voting share or limited share by or in the name of a person or any description of person is a reference to his being a shareholder according to that register;
- (j) “voting share” means a share of Pacific Western that carries the right under all circumstances to vote on a resolution electing all or any of the directors of Pacific Western.

Interpretation

2(1) For the purposes of this Act,

- (a) a corporation is affiliated with another corporation if one is the subsidiary of the other or if each of them is controlled by the same person;
- (b) a corporation with share capital is controlled by a person if shares of the corporation carrying more than 50% of the votes that may be cast to elect directors are held, other than for the purpose of giving collateral for a bona fide debt, by or for the benefit of that person, and the votes carried by those shares are sufficient, if exercised, to elect a majority of the board of directors;
- (c) a corporation without share capital is controlled by a government in Canada if all or a majority of its members or directors are appointed or designated, either by their personal names or by their names of office, by
 - (i) a statute or regulations under a statute,
 - (ii) the Governor in Council or the lieutenant governor in council of the province, as the case may be, or
 - (iii) a Minister of the Crown in right of Canada or of the province, as the case may be,
 or by any combination thereof;
- (d) a corporation is controlled by a person if the corporation is, in the opinion of the Board as evidenced by a resolution of the Board, then in fact effectively controlled by that person either directly or indirectly and either through the holding of shares of the corporation or any other corporation or through the holding

of a significant portion of the outstanding debt of the corporation, or by any other means, whether of a like or different nature;

(e) a subsidiary is a corporation that is controlled by another corporation;

(f) a person is deemed to beneficially own voting shares or limited shares if

(i) the shares are beneficially owned by a corporation controlled by that person or by an affiliate of that corporation, or

(ii) the shares are beneficially owned by that person through a trustee, legal representative, agent or other intermediary;

(g) a corporation is deemed to beneficially own voting shares or limited shares if those shares are beneficially owned by its affiliates.

(2) When voting shares are held by a person or members of a group of associated persons in excess of the percentage limit in section 4, all of the voting shares held by that person or members of that group are held in contravention of section 4 for the purposes of this Act.

Associated
persons

3(1) For the purposes of this Act, a person is associated with another person if

(a) one of them is a corporation of which the other is an officer or director,

(b) one of them is a partnership of which the other is a partner,

(c) one of them is a corporation that is controlled by the other person,

(d) both are corporations that are controlled by the same person,

(e) both are parties to a voting trust that relates to voting shares,

(f) one of them is a government and the other is an agent of that government,

(g) both are agents of the same government,

(h) both are holders of the same voting shares whether as shareholders or as beneficial owners, or

(i) both are associated within the meaning of any of clauses (a) to (h) with the same person.

(2) Notwithstanding subsection (1), for the purposes of this Act,

(a) 2 corporations shall not be deemed to be associated with each other by virtue of subsection (1)(i) by reason only that each is associated with the same person under subsection (1)(a);

(b) if not more than 5000 shares of Pacific Western are held by a person as a shareholder or beneficial owner, he is not associated with any other person and no other person is associated with him in relation to those shares;

(c) Her Majesty in right of Alberta is not associated with Her agents;

(d) if one shareholder who is associated with another shareholder under subsection (1) submits to Pacific Western a statutory declaration

(i) stating that none of the voting shares or limited shares held by him or to be held by him are or will be, to his knowledge, held in right of, or for the use or benefit of, himself or any person with whom he is associated under subsection (1), or

(ii) specifying the number of voting shares or limited shares of which he is the shareholder that are not held by him, and will not to his knowledge be held by him, in right of, or for the use or benefit of, any person with whom he is associated under subsection (1),

then neither shareholder is associated with the other in relation to those shares so long as the shares from time to time held by the shareholder who made the declaration are not held contrary to the statements made in the declaration.

(3) Notwithstanding subsections (1) and (2), the Board may by resolution declare that 2 or more persons are associated for the purposes of this Act where the Board is satisfied that

(a) those persons are parties to an agreement or arrangement under which they act in concert with respect to their interests in Pacific Western, or

(b) those persons have been and are continuing to act in concert with respect to their interests in Pacific Western.

Limitation
on holding of
voting shares

4(1) The total number of voting shares that may be held

(a) by any one person as a shareholder or beneficial owner or partly as a shareholder and partly as a beneficial owner, or

(b) by the members of any one group of associated persons, as shareholders or beneficial owners or partly as shareholders and partly as beneficial owners,

shall not exceed 4% of the total number of the issued and outstanding voting shares.

(2) Subsection (1) does not apply to Her Majesty in right of Alberta in respect of any voting shares held by Her but applies to agents of Her Majesty in right of Alberta in respect of voting shares respectively held by them.

(3) The validity of a transfer of voting shares that has been made or recorded in the securities register of Pacific Western or the validity of the issuance of voting shares of Pacific Western is not affected by the holding of the shares in contravention of this section.

(4) If 2 or more persons hold the same voting shares as shareholders or as beneficial owners, each of those persons is deemed to be the sole holder of those shares for the purposes of subsection (1).

(5) Subsection (1) does not apply to

(a) a person or group of associated persons engaged by Pacific Western or Her Majesty in right of Alberta as underwriters in connection with a distribution (as defined in the *Securities Act*) of voting shares, during the period commencing on the commencement date of that distribution and ending on the date of completion of that distribution or 120 days after the commencement date of that distribution, whichever occurs first, or

(b) a dealer registered under the *Securities Act* in respect of voting shares sold to him by Her Majesty in right of Alberta under an agreement which provides that this subsection and subsection (6) are applicable to those voting shares, during the period of 120 days after the effective date of the sale of those voting shares.

(6) Notwithstanding subsection (5), section 7 applies to voting shares referred to in that subsection during the respective periods described in that subsection as though those voting shares were held in contravention of subsection (1) during that period.

(7) If a shareholder submits to Pacific Western a statutory declaration

(a) stating that, in respect of voting shares or limited shares of which he is the shareholder, he holds those shares in right of, or for the use or benefit of, another person with whom he is not associated, and

(b) showing the name and address of that other person and the number of shares so held,

the shareholder shall be deemed not to be the holder of those shares for the purposes of determining whether this section has been contravened.

Prohibition re
dividends on
voting shares

5(1) When voting shares are held in contravention of section 4, no dividend shall be paid in respect of any of those voting shares.

(2) Notwithstanding subsection (1), if

(a) voting shares are held in contravention of section 4 by 2 or more associated persons, and

(b) the contravention was inadvertently caused by the acquisition of voting shares by one or more of those persons in circumstances where the person or persons who acquired the voting shares did not know of the association or did not know that the acquisition would result in the contravention,

dividends shall be paid only in respect of the number of voting shares not in excess of the percentage limit in section 4(1), and in determining which voting shares are in excess of that limit, the voting shares held for the shortest period of time according to the securities register of Pacific Western shall be considered as being in excess of that limit before other voting shares held for a longer time.

(3) Notwithstanding subsection (1), the Board may authorize the payment of a dividend in respect of any voting shares to a shareholder who would otherwise be disentitled to it under that subsection

if the Board is of the opinion that the contravention was inadvertent or is of a technical nature.

(4) If dividends are paid by Pacific Western in respect of voting shares otherwise than in accordance with this section, Pacific Western may by action recover the amount of the dividends so paid from the shareholders to whom they were paid whether or not Pacific Western had knowledge of the contravention of this section.

Redemption of
voting shares

6(1) If voting shares are held in contravention of section 4, Pacific Western may, by notice to the shareholder of those shares, require the voting shares in excess of the percentage limit in section 4 to be disposed of within the period stated in the notice to a person who may hold voting shares.

(2) A notice under subsection (1)

(a) may be given by mail or by personal service, and

(b) shall prescribe a period of not less than 60 days as the period within which the voting shares must be disposed of.

(3) If the excess voting shares referred to in subsection (1) have not been disposed of within the time set out in the notice given under that subsection, Pacific Western may, at any time while those shares continue to be held in contravention of section 4, redeem them for cancellation on

(a) the deposit by Pacific Western of the amount of the redemption price of the shares in a special account with a bank or treasury branch, and

(b) the giving of a notice of redemption to the shareholder of those shares in the manner prescribed by the by-laws, including notice of the deposit referred to in clause (a),

and thereupon the voting shares shall be deemed to be redeemed for cancellation and the rights of the shareholder and any beneficial owners of them cease except the right of a beneficial owner to receive out of the amount so deposited, without interest, the redemption price payable with respect to the shares on presentation and surrender of the certificate representing the shares.

(4) Any interest payable by the bank or treasury branch on the deposit made pursuant to subsection (3)(a) shall be paid to Pacific Western.

(5) Pacific Western is not bound to see to the application of the amount deposited or to the execution of any trust, whether express, implied or constructive, in respect of any voting shares redeemed for cancellation under this section, nor is Pacific Western estopped by any certificates outstanding in respect of any voting shares redeemed for cancellation.

(6) Unless, before a notice of redemption is given under subsection (3)(b), Pacific Western is notified in writing of an agreement among the shareholders and beneficial owners of the voting shares concerned specifying the excess shares that are to be redeemed for cancellation, Pacific Western shall redeem voting shares for cancellation

under subsection (3) according to the length of time they have been held as evidenced by the securities register, with the voting shares held for the shortest period of time being redeemed for cancellation before others held for a longer time.

(7) The redemption price of voting shares for the purposes of this section is the lesser of

- (a) the issue price per share on the first distribution of voting shares to the public after the coming into force of this Act, and
- (b) the lowest closing price per share of the voting shares on the principal stock exchange occurring in the 12-month period preceding the date of the giving of the notice of redemption.

(8) In subsection (7)(b), “principal stock exchange” means the stock exchange in Canada designated by the Board as the principal stock exchange for Pacific Western.

(9) The provisions of this section shall be set out in each share certificate issued by Pacific Western and representing a voting share or in an attachment to the certificate.

Prohibition
re voting

7(1) If a person or the members of any one group of associated persons hold, as shareholders or as beneficial owners or partly as shareholders and partly as beneficial owners, a number of

- (a) voting shares,
- (b) limited shares, or
- (c) voting shares and limited shares,

which in the aggregate exceed 4% of the total number of shares of Pacific Western then issued and outstanding, the voting rights attached to all of those shares so held shall not be exercised.

(2) If voting rights are exercised in contravention of subsection (1) at a meeting of the shareholders of Pacific Western, no vote or other proceeding at that meeting is void by reason of the contravention, but any such vote or proceeding is, at any time within one year from the date of commencement of the meeting at which those voting rights were exercised, voidable at the option of the Board by a resolution of the Board.

Request for
information

8(1) A shareholder of Pacific Western shall, on the written request of the Board given in accordance with subsection (2) and the by-laws, submit a statutory declaration to Pacific Western with respect to

- (a) his beneficial ownership of any voting shares or limited shares;
- (b) the identity of the beneficial owner of all or any of the voting shares or limited shares of which he is the shareholder;
- (c) whether he is associated with any other person;
- (d) any other matter the Board considers relevant for the purposes of determining whether the voting shares held by him or persons associated with him are held in contravention of section 4 or whether voting rights have been exercised in contravention of section 7.

(2) A request under subsection (1)

(a) may be given by mail or personal service, and

(b) shall prescribe the period following the giving of the request, being not less than 30 days, within which the request must be complied with.

(3) When a statutory declaration has been requested under this section by the Board from a shareholder and the shareholder fails or neglects to submit to the Board a declaration satisfactory to the Board within the time prescribed in the request, then, until a declaration satisfactory to the Board has been submitted to it,

(a) in the case of voting shares held by the shareholder, sections 5, 6 and 9(a) and (b) apply to those voting shares as though they were voting shares held in excess of the percentage limit in section 4, and

(b) sections 7 and 9(c) apply to the voting shares and limited shares held by that shareholder as though they were held in excess of the percentage limit in section 7.

(4) It is a condition of every transfer of a share to be made or recorded in the securities register of Pacific Western and of the issue of any voting share of Pacific Western that the transferee or purchaser shall, at the request of the Board, submit to the Board a declaration to the like effect as the declaration that may be requested by the Board under subsection (1).

(5) Subject to subsection (7), when the Board has requested a statutory declaration pursuant to subsection (4), the Board shall not accept any offer to purchase a voting share or allow any transfer to be made or recorded in the securities register of Pacific Western unless the declaration has been submitted to the Board and it appears from the declaration that the purchaser or transferee would not, by the acceptance of the offer to purchase the shares being purchased or the entry in the securities register of the shares being transferred, hold those shares in contravention of section 4.

(6) When, in the case of the issue or transfer of any voting shares, it appears that the number of shares that would be held by the purchaser or the transferee, as shown by the securities register of Pacific Western, would not be more than 5000 shares if the offer to purchase were accepted or the transfer allowed, the Board is entitled to assume that the purchaser or the transferee is not and will not be associated with any other person.

(7) In the case of the purchase of voting shares pursuant to an offer of shares by way of rights granted by Pacific Western to holders of its shares to purchase additional shares, Pacific Western may count as shares issued and outstanding all the shares included in the offer.

Judicial remedies

9 The Court of Queen's Bench may, on the application of a shareholder, make an order of any or all of the following kinds:

(a) an order directing Pacific Western to commence and diligently prosecute an action under section 5(4);

(b) an order directing Pacific Western to commence and diligently prosecute proceedings under section 6 for the redemption of the voting shares specified in the order;

(c) an order giving directions respecting

(i) an election of members of the Board, and

(ii) the term of office of the members of the Board elected at that election,

if the Court is satisfied that all or a majority of the existing Board were elected at an election at which voting rights were exercised in contravention of section 7.

Reliance by
Pacific Western

10 In determining, for the purposes of this Act,

(a) whether any voting shares are held in contravention of section 4,

(b) whether any voting rights were exercised in contravention of section 7,

(c) whether a person is associated with any other person, or

(d) any other circumstances relevant to the performance of the duties of the Board under this Act,

Pacific Western and any director, officer, employee or agent of Pacific Western may rely on any statements made in any declaration submitted under section 8 or rely on the knowledge of any of the directors of the circumstances and Pacific Western and its directors, officers, employees or agents are not liable in an action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statement or knowledge.

Ruling by Board

11 The Board may, on application, make a ruling on whether any person or group of associated persons holds voting shares in contravention of section 4 or whether section 7(1) applies to any person or group of associated persons, and the Board is bound by a ruling so made unless the applicant did not disclose a fact material to the Board in making its ruling or unless there is a subsequent material change of circumstances.

Continuance and
name change

12 Pacific Western

(a) may not be continued in another jurisdiction pursuant to section 182 of the *Business Corporations Act*, and

(b) may not change its name without the prior consent of the Lieutenant Governor in Council.

Corporate name

13 Pacific Western may use the name “Pacific Western Airlines” in place of its corporate name.

Prevalence of Act

14 If there is any conflict between this Act and

(a) the *Business Corporations Act* as it applies to Pacific Western,

(b) the articles of Pacific Western, or

(c) the by-laws,
this Act prevails.

*In accordance with section 4(1) of the Interpretation Act,
this Bill comes into force on the date it receives Royal
Assent.*