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Agricultural Law NetLetter™

A twice-monthly current awareness service reviewing recent cases on land use, marketing boards, environmental issues, creditors rights, animals, grain, import/export and other matters in an agricultural context.

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Bi-weekly issues are added on Thursdays.

**** HIGHLIGHTS ****

* The Supreme Court of Canada has held that the ability of provincial and municipal authorities to regulate agricultural land use is limited by the core federal power over aeronautics. Quebec land owners who constructed a private aerodrome and then licensed the aerodrome under the Federal Aeronautics Act did not have to comply with the provisions of a Quebec zoning law which prohibited the use of designated agricultural lands for non-agricultural purposes without the approval of a provincial commission. There was no direct conflict between the provincial and federal legislation. However, the fact that the provincial Agricultural Land Act seriously interfered with federal jurisdiction concerning the location of aerodromes rendered the provincial Agricultural Land Act "constitutionally inapplicable" pursuant to the doctrine of interjurisdictional immunity. (Québec (Attorney General) v. Canadian Owners and Pilots Association, CALN/2010-028, [2010] S.C.J. No. 39, Supreme Court of Canada)

* An adjudicator of the Small Claims Court of Nova Scotia has held that a domesticated goat falls within the category of animals wild by nature, and therefore, the law imposes a very high duty on the owner to prevent it from causing injury. (Pittman v. Morin, CALN/2010-029, [2010] N.S.J. No. 527, Nova Scotia Small Claims Court)

**** NEW CASE LAW ****

Québec (Attorney General) v. Canadian Owners and Pilots Association; CALN/2010-028, Full text: [2010] S.C.J. No. 39; 2010 SCC 39, Supreme Court of Canada, McLachlin, C.J., and Binnie, LeBel, Deschamps, Fish, Abella,, Charron, Rothstein and Cromwell JJ. October 15, 2010.

Constitutional Law -- Provincial Power to Zone Land for Agricultural Purposes -- Conflict With Federal Aeronautics Power -- Location of Private Airports.

Bernard Laferrière and Sylvie Gervais owned land situated within a designated agricultural region near Shawinigan, Québec. The land was cleared and a grass airstrip and aerodrome were constructed on the property. Subsequently, the Commission de protection due territoire du Québec ("Commission") ordered them to return the land to its original state pursuant to provisions within An Act Respecting the Preservation of Agricultural Land and Agricultural Activities, R.S.Q., c. P-41.1 ("Act"). Laferrière and Gervais challenged the Commission's order.

The Agricultural Land Act provides the province with the power to designate certain areas as agricultural regions. Section 26 of the Agricultural Land Act further prohibits the use of lots in a designated agricultural region for purposes other than agriculture, subject to prior Commission authorization to the contrary. Laferrier and Gervais did not obtain the permission of the Commission prior to constructing the airstrip and hangar. However, Laferrière and Gervais did register their aerodrome under the federal Aeronautics Act, which permits a citizen to construct a private aerodrome without applying for permission from the federal government. The Aeronautics Act gives private citizens the option of registering with the Minister of Transport. If the owner registers, the owner must maintain federal standards and make their aerodrome available to anyone who needs to land.

Decision: McLachlin, C.J. for the majority, LeBel and Deschamps, J.J. dissenting, dismissed the appeal of the Attorney General of Quebec and upheld the decision of the Quebec Court of Appeal and held [at para. 75] that:

(a) The Agricultural Land Act was constitutionally inapplicable under the doctrine of interjurisdictional immunity to the aerodrome, and

(b) The Agricultural Land Act was not constitutionally inoperative under the doctrine of federal legislative paramountcy, having regard to the Aeronautics Act.

McLachlin, C.J. held that both the purpose and effect of Section 26 of the Agricultural Land Act were, in pith and substance, legislation about land use planning and agriculture [at para. 21].

The Agricultural Land Act is therefore valid provincial legislation under the Constitution Act, 1867, by relating to property (s. 92(13)), matters of local nature (s. 92(16)), or agriculture (s. 95) [para. 22].

McLachlin, C.J. then considered the following issues:

A. Interjurisdictional immunity

McLachlin, C.J. summarized the doctrine of interjurisdictional immunity at para. 26 and 27, stating as follows:

> 26 Interjurisdictional immunity was initially developed in the context of federal undertakings (Canadian Pacific Railway Co. v. Corporation of the Parish of Notre Dame de Bonsecours, [1899] A.C. 367 (P.C.)) and federally incorporated companies (see John Deere Plow Co. v. Wharton [1915] A.C. 330 (P.C.); Great West Saddlery Co. v. The King, [1921] 2 A.C. 91 (P.C.); Attorney-General for Manitoba v. Attorney-General for Canada, [1929] A.C. 260 (P.C.)). However, the doctrine was then applied more widely and was understood to protect a certain minimum content of every federal head of power: Bell Canada v. Quebec (Commission de la sante et de la securite du travail), [1988] 1 S.C.R. 749, at p. 839; OPSEU v. Ontario (Attorney General), [1987] 2 S.C.R. 2, at p. 18 per Beetz J.; Ordon Estate v. Grail, [1998] 3 S.C.R. 437. Following Canadian Western Bank v. Alberta, 2007 SCC 22, [2007] 2 S.C.R. 3, the prevailing view is that the application of interjurisdictional immunity is generally limited to the cores of every legislative head of power already identified in the jurisprudence (paras. 43 and 77).
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> 27 The first step is to determine whether the provincial law - s. 26 of the Act - trenches on the protected "core" of a federal competence. If it does, the second step is to determine whether the provincial law's effect on the exercise of the protected federal power is sufficiently serious to invoke the doctrine of interjurisdictional immunity.

McLachlin, C.J. held that the location of aerodromes lies at the core of federal aeronautics power, stating at para. 37:

> 37 Here precedent is available and resolves the issue. This Court has repeatedly and consistently held that the location of aerodromes lies within the core of the federal aeronatics power. In Johannesson, which concerned a municipal by-law that prevented the plaintiff from constructing an aerodrome on the outskirts of Winnipeg, the Court held that the location of aerodromes is an essential and indivisible part of aeronautics. As noted above, Estey J. held that aerodromes are "an essential part of aeronautics and aerial navigation" (p. 319). The location of aerodromes attracts the doctrine of interjurisdictional immunity because it is essential to the federal power, and hence falls within its core: see Canadian Wester Bank, at para. 54; Construction Montcalm, at pp. 770-71; Air Canada, at para. 72; Greater Toronto Airports Authority v. Mississauga (City) (2000),

192 D.L.R. (4th) 443 (Ont. C.A.); Comox Strathcona (Regional District) v. Hansen, 2005 BCSC 220, [2005] 7 W.W.R. 249; Venchiarutti v. Longhurst (1989), 69 O.R. (2d) 19 (H.C.J.), aff'd (1992), 8 O.R. (3d) 422 (C.A.).

McLachlin, C.J. concluded [at para. 40] that since s. 26 of the Agricultural Land Act purported to limit where aerodromes can be located, it followed that it trenched on the core of the federal aeronautics power.

Finally, McLachlin, C.J. held that the interference of the Agricultural Land Act with the federal aeronautics power was serious and therefore constitutionally unacceptable. The Agricultural Land Act substantially impaired the exercise of federal power, namely the ability to decide when and where aerodromes should be built [para. 47]. If the Agricultural Land Act did prevail, the result would be the removal of sixty-three thousand square kilometres of land designated for agricultural use within the Province of Quebec that Parliament had designated for aeronautical uses [para. 48].

McLachlin, C.J. rejected the Province's argument that the Agricultural Land Act did not impair the federal aeronautics power as Parliament was free, if it wished, to designate particular locations for airports and then rely on the doctrine of paramountcy [at para. 50 and 56].

McLachlin, C.J. concluded at para. 60 and 61 that the ability of provincial and municipal authorities to impose an agricultural land use regulation was limited by the interjurisdictional immunity afforded the federal government with respect to aeronautics, stating, at para. 60 and 61:

> 60 To sum up, the doctrine of interjurisdictional immunity is applicable in this case. The location of aerodromes lies at the core of the federal competence over aeronautics. Section 26 of the Act impinges on this core in a way that impairs this federal power. If s. 26 applied, it would force the federal Parliament to choose between accepting that the province can forbid the placement of aerodromes on the one hand, or specifically legislating to override the provincial law on the other hand. This would seriously impair the federal power over aviation, effectively forcing the federal Parliament to adopt a different and more burdensome scheme for establishing aerodromes than it has in fact chosen to do so.
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> 61 To be sure, this result limits the ability of provincial and municipal authorities to unliaterally address the challenges that aviation poses to agricultural land use regulation. However, as Binnie and LeBell JJ. noted in Canadian Western Bank, at para. 54, Parliament's exclusive power to decide the location of aircraft

> landing facilities is vital to the viability of aviation in Canada. As stated in Lafarge Canada: "The transportation needs of the country cannot be allowed to be hobbled by local interests. Nothing would be more futile than a ship denied the space to land or collect its cargo and condemned like the Flying Dutchman to forever travel the seas" (para. 64).

B. Federal Paramountcy

> McLachlin, C.J. rejected the argument of the Attorney General of Canada that the Agricultural Land Act was constitutionally inoperative by virtue of the doctrine of federal legislative paramountcy. It was possible to comply with both the provincial and federal regulation. There was no evidence to establish that a federal purpose regarding the location of aerodromes was frustrated by the provincial legislation [at para. 47].

Pittman v. Morin; CALN/2010-029, Full text: [2010] N.S.J. No. 527; 2010 NSSM 56, Nova Scotia Small Claims Court, Adjudicator D.T.R. Parker, September 30, 2010.

Animals -- Liability for Damages Caused by Animals -- Ferea Naturae vs. Mansuetae Naturae -- Goats.

The Defendant had domesticated a goat, Simba, within a residential neighbourhood in Middle Sackville, Nova Scotia. The goat was being "goatsat" while the Defendant was on vacation and managed to escape from supervision. Upon its escape, it attempted to attack a young child, who evaded the goat by hiding in a vehicle. The goat proceeded to damage the vehicle by ramming into the side of it and eventually jumping onto the vehicle causing further damage.

Decision: Adjudicator Parker held that the Defendant was liable for the damages caused by his goat and awarded the Plaintiff judgment for approximately $1,500.00, including costs. Adjudicator Parker observed the animals were divided into two categories: ferea naturae (wild animals) and mansuetae naturae (domesticated animals). Although the goat had been kept by the Defendant in a domesticated manner, the Court held that the goat fell within the category of ferea naturae. The Court held that one can only domesticate a goat to a certain point, but that it will inevitably remain a wild animal. In turn, the Court held that the law imposed a very high duty on the Defendant to prevent any kind of injury from such animals, even if the owner believes the animal to be harmless. Furthermore, the Court held that an owner would be strictly liable for any injury caused by that animal, and that the owner may only escape liability by establishing that they used due diligence to ensure that any damage would not happen, including:

> Consent of the person who is injured or whose property was damaged might escape liability.
>
> Contributory negligence where the person who is injured or their property

that was damaged, disregarded clear warnings not to go near the animal.

An act over which the owner has no control such as a person intervening and allowing the animal to escape its cage or its pen.

An act of God which allows the animal to escape and therefore was beyond the control of the owner.

** CREDITS **

This NetLetter is prepared by Brian P. Kaliel, Q.C. of Miller Thomson LLP, Edmonton, Alberta.