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Jurisdiction up in the air?

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The Quebec Court of Appeal has issued an important decision concerning the application of zoning by-laws to aeronautical activities. In Lacombe et al. v. Sacré-Coeur (Municipalité de), the Court was called upon to rule on a sensitive issue respecting the division of jurisdiction between the federal and provincial governments. More precisely, the Court had to decide whether a municipality could govern the location of aerodromes by determining the zones in which they can be located.

Annabelle Lacombe and Jacques Picard were the shareholders and directors of Aviation Mauricie, which offered various air transport services, including the transportation of persons. Until 2004, its operations were carried on from a hydro-aerodrome located at lac Long, within the territory of the Municipality of Sacré-Coeur. For various reasons, Aviation Mauricie decided in 2005 to operate its business at lac Gobeil, also located within the territory of the Municipality of Sacré-Coeur.

A few days after Air Mauricie began operating at lac Gobeil, the Municipality of Sacré-Coeur filed a motion for the issuance of a provisional, interlocutory and permanent injunction, in which it alleged that Aviation Mauricie was contravening its zoning by-laws.

It should be noted that by virtue of the application of doctrine of interjurisdictional immunity, even if Parliament has not legislated on a given subject, a provincial legislature cannot enact laws that affect, even incidentally, matters that are at the core of federal jurisdiction. This doctrine may also be invoked in favour of a provincial legislature in cases involving matters under its exclusive jurisdiction. The “core” is what is [translation] “vital” or [translation] “absolutely necessary” to the exercise of the jurisdiction under review. With respect to aeronautics, Canadian case law recognizes that the location of airports and aerodromes, the ground equipment for air navigation, the buildings and structures on airport sites, and the standards respecting safety and airplane noise, constitute vital and essential elements of the federal jurisdiction over aeronautics.

The Court of Appeal noted what the Supreme Court had already decided, that is to say that the choice of a site comes within the federal government’s exclusive jurisdiction and is a vital and essential part of its jurisdiction.

A motion for leave to appeal was filed in the Supreme Court by the Attorney General of Quebec on May 2, 2008. It will be a few months before we know if the Supreme Court will agree to intervene in the case.

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