

CASE LAW UPDATE

Nicholas Caughey, WeirFoulds LLP *

Quebec (A.G.) v. Canadian Owners and Pilots Association

2010 SCC 39, Released October 15, 2010

Constitutional Law – Division of Powers – Aerodomes

This case concerns an aerodrome built by two private citizens on lands zoned "agricultural" in Québec. The Province argued that the placement of the aerodrome at issue violated its planning law, namely that land designated "agricultural" by the Province had to be used for that purpose, subject to prior authorization from a provincial board for other uses.

The Court applied the doctrine of interjurisdictional immunity, even though the doctrine received much theoretical diminishment by the Court in *Canadian Western Bank v. Alberta*, 2007 SCC 22. Interjurisdictional immunity may render an otherwise valid provincial law inapplicable as the effects of its application trench on the core of a protected power within Parliament's jurisdiction. The test is whether the impugned law comes within the "basic, minimum and unassailable content", or essential jurisdiction, of the legislative power in question.

The Majority found that the provincial laws designating agricultural land were in pith and substance *intra vires* provincial jurisdiction, by virtue of ss. 92(13), (16) and 95 of the *Constitution Act, 1867*, but that the incidental effects of its application impaired the well-established "core" of the federal jurisdiction over aeronautics under the POGG power, which has been identified in Supreme Court jurisprudence to include the ability to determine the location of airports and aerodromes. The provincial law was therefore

deemed inapplicable, by virtue of the doctrine of interjurisdictional immunity, to the extent that it prohibits aerodromes on lands zoned agricultural.

*Nicholas Caughey is an Associate at WeirFoulds LLP (www.weirfoulds.com)