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Canada's Need for a Central Aircraft Registry

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In Canada today the prospective purchaser of an aircraft is often surprised to learn that there is no way by which he can assure himself of clear title in return for the purchase price he pays. Nor can the financial institution which advances the purchase money against the security of a mortgage or other encumbrance, ensure that there are no other prior claims or that its own security will take precedence over subsequent purchasers, mortgagees and other creditors. These problems arise because Canada does not have a central registry for the recordation of security interests in civil aircraft. The lack of such a registry has had a detrimental effect upon the orderly development of Canadian aviation and in particular creates a serious impediment in aircraft financing transactions.

Canada is a signatory of the Convention on the International Recognition of Rights in Aircraft, 1948 but is unable to take advantage of the protection offered by the Convention until a central registry is established, for the reason that security rights will only be respected abroad in member States when such rights have been duly recorded in a central register maintained in Canada. The Convention is intended to facilitate the financing of aircraft employed in international carriage and has to date been ratified by twenty-two nations,¹ with adherences received from a further three nations.² It is particularly significant for Canada that both the United States of America and Mexico have ratified the Convention so that, with Canada's ratifica-

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tion, the protection of the Convention would cover a geographical area extending from the south of Mexico to the Arctic Ocean, including Alaska, and security rights in all civil aircraft in the three countries would be recorded in three registers.

Interested Parties

The interest in title to an aircraft is twofold. Firstly, there are those persons who are concerned with what prior liens or encumbrances in the form of chattel mortgages, conditional sales contracts, etc. affect the title to the aircraft and secondly, there are those persons who are concerned with the registration or giving of notice to subsequent purchasers, mortgagees or creditors of prior interest in the title to the aircraft.

While obtaining a clear title is of obvious importance to an individual buying a ten thousand dollar private airplane, it is essential to a company which is about to make a million dollar capital expenditure to acquire an executive jet aircraft. In buying a new aircraft from a manufacturer, the purchaser can usually rely upon the representations and warranties as to title contained in the sales contract, but the manufacturer or vendor which sells on terms under a title retention arrangement or mortgage is concerned with protecting its prior interest and being able to repossess the property in an event of default. If the manufacturer or vendor of a new or used aircraft finances the sale, the lending institution while being initially concerned that clear title can be obtained, has the same secondary concern that its preferred position under a conditional sales contract or chattel mortgage will prevail over any claims of subsequent purchasers, mortgagees and other creditors. The lack of a central registry has also created a problem for Canadian airlines endeavouring to sell used flight equipment abroad since the prospective purchaser cannot

¹ The countries and effective dates are as follows : Argentina (May 1, 1958), Brazil (October 1, 1953), Chile (March 18, 1956), France (May 27, 1964), Italy (March 6, 1961), Mexico (September 17, 1953), Netherlands (November 30, 1959), Switzerland (January 1, 1961), U.S.A. (September 17, 1953), Denmark (April 18, 1963), Norway (June 3, 1954), Sweden (February 14, 1956), Cuba (September 18, 1961), Pakistan (September 17, 1953), Federal Republic of Germany (October 5, 1959), Haiti (June 22, 1961), Mali (March 28, 1962), Islamic Republic of Mauretania (October 21, 1963), Niger (March 27, 1963), Algeria (November 8, 1964), Ivory Coast (November 21, 1965) and Tunisia (August 2, 1966).

² Adherences were received from Laos (September 9, 1956), Ecuador (October 12, 1958) and El Salvador (November 12, 1958).

determine what prior liens and encumbrances may exist. The suppliers of engines and certain other major components and spares for aircraft are also interested in being able to record their prior interest and thereby protect themselves against such contingencies as default in payment, bankruptcy or insolvency on the part of the customer who has purchased on credit or leased the items in question.

The ease and cost of obtaining financing are normally related to the degree of title protection that the financial institution may obtain on its security. The element of risk in losing one's security is a factor in determining the rate of interest to be charged. What trust company would consider granting a mortgage on real estate, be it a summer cottage or an office building, without first ascertaining that the title was free and clear and that its mortgage constituted a valid and enforceable prior right upon the property ?

The registry problem has the appearance of being further complicated by the existence at the Department of Transport offices in Ottawa of a register of the owners of Canadian civil aircraft. The Certificate of Registration for a Canadian aircraft issued by the Department of Transport is misleading to the uninformed and does not mean that the "owner" thereon named has clear legal title to the aircraft. In fact, the purchaser under a conditional sales contract or the lessee under a long term lease, who has no legal title to the aircraft, is named on the Certificate of Registration as the "owner" and is so defined in the Air Regulations.

Current Situation in Canada

Interested parties must search in all common law provinces of Canada where the aircraft may have been for any registered encumbrances against the aircraft. The log book of the aircraft is of some assistance in determining where to search, but log books are not always accurate, and if a fraud is to be perpetrated, the fraudulent person is unlikely to disclose in the log book that the aircraft was ever located at the place where the encumbrance is registered. A proper search for encumbrances would involve searching every county where the aircraft may have been in every common law province that did not have a central registry. The search would be somewhat easier in those common law provinces where a central registry was located. Failure to make such a complete search may result in the aircraft landing at a distant airport only to be repossessed or seized under an encumbrance registered in the county or province where the airport is located. It is obvious that great time and expense is involved

in making a proper search. Even after completing such an exhaustive and expensive title search, the aircraft title may still be affected by an encumbrance in the Province of Quebec that is not required to be registered.

Each of the nine common law provinces of Canada has by legislation provided for the registration of chattel mortgages and conditional sales contracts excepting Manitoba which does not require the registration of conditional sales contracts. In some provinces registration is made in the county where the aircraft is situated at the time and must be made within a limited time after the date of the transaction. This registration is effective notice to subsequent purchasers, mortgagees and, in some instances, creditors of the person in possession of the aircraft, provided the aircraft is not moved out of the county where the registration was made.

The common law provinces of British Columbia, Saskatchewan and Alberta have each established a central registry for the province to include aircraft, so that provision is made for the registration of encumbrances with effect so long as the aircraft does not leave the province. The Province of Newfoundland is in a similar position as there is only one registry for encumbrances for the whole of the province.

All of the common law provinces have legislative provisions for the re-registration of chattel mortgages and conditional sales contracts when the aircraft is moved, in some cases where there is not a central provincial registry, from one county to another in the same province, and in all cases where the aircraft is moved from one province to another. The time limit for such re-registration varies from twenty (20) days to two months, and in some provinces the time runs from when the mortgagee or conditional seller receives notice of the removal of the aircraft, and in other provinces the time for re-registration runs from the time the aircraft is moved notwithstanding the mortgagee or conditional seller did not know about the move.

The Province of Quebec does not have a system of registration comparable to that of the common law provinces. The registration of encumbrances against moveable property is the exception rather than the rule with registration only being possible in certain instances. Moveable property is susceptible of registration under a trust deed and an aircraft financing could be handled in this manner. Recently the Civil Code was amended to introduce a non-dispossessory category of pledge for certain commercial transactions. The validity of commercial pledge is dependent upon registration locally in the district in which the property is located and the protection of the pledge is

questionable when dealing with property as mobile as an airplane. There is no means of registering a conditional sales contract in Quebec and in general it is not possible for a purchaser of moveable property to ascertain what prior claims or title interest exist.

The finance agency, to protect its interest in the aircraft secured by a chattel mortgage or conditional sales contract, must follow the movement of the aircraft and register its security in accordance with the particular laws of the province where the aircraft is from time to time located. Failure to do so may result in loss of its interest in the aircraft. A further difficulty is encountered in that the registration of chattel mortgages and conditional sales contracts must be renewed after periods varying from one to three years depending on the province of registration.

An example of the present situation in Canada is this : if an aircraft is sold to an operator based at Malton Airport, the seller taking a chattel mortgage from the purchaser as security, and registers the chattel mortgage in the County of Peel where Malton Airport is located. Unknown to the conditional seller, the aircraft is moved to Toronto Island Airport and remains there for a few months during which time the purchaser goes into bankruptcy. The Toronto Island Airport is situated in the County of York and the relevant law of Ontario requires that the chattel mortgage must be registered in the County of York within two months after the aircraft is moved there. The failure to re-register in the County of York results in the seller who held the chattel mortgage losing that security and only being able to claim in the bankruptcy as an unsecured creditor.

Another example that has actually occurred was the case of an aircraft based at Winnipeg that was flown to Ontario and left in Ontario as security for charter services rendered. About three months after the aircraft had arrived in Ontario the finance agency, who held a chattel mortgage registered in Winnipeg, discovered that the aircraft had been moved to Ontario, at which time it was too late to re-register the chattel mortgage in Ontario. The finance agency, as a result, lost its security in the aircraft.

United States Central Registry

The problem of recording security interests in aircraft was solved in the United States of America in 1938 when that country established a central registry. The registry was originally located in Washington, D.C. but was subsequently moved to Oklahoma City, Oklahoma where it is today. The procedures observed by the registry are simple and

expeditious. A title search of any civil aircraft in that country can be made within a matter of a few hours by a telephone call to any one of several firms of attorneys in Oklahoma City, the only information required being the identification of the aircraft in question.

At the Hearing on June 18th, 1963 before a Subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives with respect to an amendment to Section 503 of the Federal Aviation Act, 1958, Mr. James D. Hill, then Deputy General Counsel of the Federal Aviation Agency, described the history and function of the twenty-five year old registry in the following terms :

“... Section 503 of the Federal Aviation Act... in effect creates a national recording systems for title to aircraft. That section originally was a part of the Civil Aeronautics Act of 1938 and was later transposed without any substantive change into the Federal Aviation Act of 1958. It was an early congressional response to a pressing problem in the aviation industry.

It had become apparent that the recording systems of the various States to record interests in personal property presented special difficulties with regard to aircraft.

It is my understanding that originally the Commissioners on uniform State laws recommended to the Congress that there be a national recording system for aircraft because local recording systems which were perfectly fine for real estate, refrigerators, television, or other appliances are not effective for aircraft, so the Congress did in the Civil Aeronautics Act of 1938, create a Federal recording system... so in ascertaining whether clear title exists to an aircraft, the public need consult only one file instead of the county recorder in 10,000 different counties and that is the file maintained at Oklahoma City by our Aircraft Registration Branch of the Federal Aviation Agency”.

The Geneva Convention

The major airlines of Canada have international routes the maintenance of which requires that a certain proportion of the airlines' equipment be continuously in foreign countries. Such equipment includes spare engines, spare parts, handling equipment and special tools dispersed at depots at various international centres, in addition to the aircraft which make daily flights from country to country and from continent to continent. Certain of the country's regional carriers are now operating international charter services as well. This

situation poses a serious problem to the airline and to any financial institution concerned since it is usually difficult to predict the extent to which property rights and security interests in such equipment will be recognized by foreign courts. Until the present, this has been largely regarded as a calculated risk for the financial institution and the practice has been to limit the risk by stipulating in the security instrument as a condition precedent to default that not more than a certain specified number of aircraft and amount of spares can be outside of the country of registration at any one time.

It was the intention of the Legal Committees of the International Civil Aviation Organization and the International Air Transport Association to resolve this problem when, in 1948, the Convention on the International Recognition of Rights in Aircraft, known as the Geneva Convention, was opened for signature in Geneva, Switzerland.

The general objective of the Convention is the facilitation of the financing of aircraft employed in international carriage. More specifically, the objectives can be said to be four : the protection of secured creditors who lend money on the security of aircraft ; the protection of third parties, dealing in or with aircraft against hidden charges ; the definition and protection of "privileged" and "priority" claims against aircraft ; and the facilitation of the transfer of aircraft from one nationality to another.

Under the Geneva Convention two conditions are required before a right is recognized and enforced : first, it must be constituted in accordance with the law of the contracting State in which the aircraft was registered as to nationality at the time of its constitution ; and second, the right must be recorded in a central registry of the contracting State in which the aircraft is registered as to nationality. No State is obliged to establish a central registry but since "recordation" is a condition of recognition, it was assumed that a State ratifying the Convention would necessarily establish a central registry to obtain recognition of the rights of its own secured creditors. The priority of recorded rights and the regularity of the record are left to be governed by the law of the State maintaining the record.

There are two practical effects of recognition by the Convention worthy of note. Under Article 1 (2) once a valid charge were, for example, entered in the Canadian registry by a vendor or creditor in Canada a foreign court would be obliged to give such a charge priority over all other claims arising in the foreign member State, with the exception of certain claims relating to salvage and preservation of the aircraft. Another advantage to the secured creditor results from Article IX of the Convention which prohibits the transfer of

the aircraft to another national register unless the holders of all recorded charges have been satisfied or consent to the transfer.

The Geneva Convention has been ratified by the United States of America, Mexico, Pakistan, Germany, Brazil, Norway, Sweden, Denmark, Chile, Argentina, France, Italy, Netherlands, Switzerland, Cuba, Haiti, Mali, Islamic Republic of Mauritania, Niger, Algeria, Ivory Coast and Tunisia and adherences have been received from Laos, Ecuador and El Salvador. Although Canada signed the Convention in 1948, little would be accomplished by its ratification until the central registry for security rights in aircraft has been established. It is significant that the ratification of the Convention by Canada would extend security protection to North America creditors over that vast area extending from the southern border of Mexico to the Arctic coastline of Alaska and Canada. Since Canada, the United States of America and Mexico would then be adjacent contracting States, a security holder would be able to ascertain his legal rights by merely searching three registers.

Canadian manufacturers of aircraft and engines are reluctant to sell into certain foreign markets on credit terms without some form of credit insurance either obtained commercially or, more commonly in the case of aircraft sales, through the Export Credits Insurance Corporation. A wider acceptance of the Geneva Convention and, in particular, its ratification by Canada will reduce the security risk and should result in lower credit insurance premiums on aircraft sales, a saving which can be passed on to the customer.

A Proposed Solution

The present situation could be solved by the establishment at a central location of a Central Aircraft Registry for the registration of all aircraft liens and encumbrances affecting Canadian civil aircraft and engines and by the subsequent ratification by Canada of the Geneva Convention. The Canadian Bar Association recommended the establishment of such a registry in 1956 and more recently, in May, 1964, submitted a brief on the subject to the Government of Canada. No action has been taken by the Department of Transport to implement these proposals, although it is understood that the matter has been under consideration for several years.

The establishment of the registry could be effected with a minimum of administrative burden and delay. The expense involved would not be appreciable since all that is physically required is a set of files administered by a few persons who undoubtedly would have other

duties. The registry should be located centrally from a geographic point of view, having regard to the greatest concentration of aircraft transactions and rapid postal communication. The Canadian Bar Association specifically made the following proposal for the consideration of the Government of Canada :

- “1. A Registrar and Deputy Registrar of aircraft titles would be appointed to be the administrative heads of the registry.
2. All owners of aircraft and aircraft engines over 850 horsepower, except state aircraft, could register their aircraft and engines at the registry upon the submission of proof of ownership satisfactory to the Registrar. The registration of aircraft presently in Canada would not be compulsory, but the registration of all aircraft and engines over 850 horsepower of Canadian manufacture for use in Canada and also those imported into Canada would be compulsory. It is contemplated that nearly all the aircraft presently in Canada would in time be registered at the time of resale or finance. This would permit the Registry to commence operation without having to initially register all aircraft and engines presently in Canada. It is anticipated that before an aircraft presently in Canada would be accepted for registration, the Registrar would ensure that any encumbrance that had been registered in accordance with provincial legislation would also be registered. The cost of the necessary searches would be borne by the applicant for registration.
3. Any document purporting to transfer title, or to create a lien or encumbrance on, or to lease for more than one year an aircraft or engine over 850 horsepower, shall be null and void as against any other person except the parties thereto unless it is on a form prescribed by the regulations and completed in a manner acceptable to the Registrar. This provision would not be applicable to an aircraft or engine that had not been registered in the Central Aircraft Registry.
4. The time and date of registration shall determine the priority of two or more documents registered against the same aircraft or engine.
5. Any person may upon payment of the prescribed fee be provided with an abstract of title to any registered aircraft showing all documents registered against the aircraft or engine and may upon payment of a further fee be provided with a copy of all documents appearing on the abstract of title.

6. The legislation providing for the establishment of the registry would be drafted in such form and terms to enable Canada to ratify the Geneva Convention, 1948".

The registry in operation could be quite simple. The interested party would write to the registry requesting an abstract of title that would show the registered owner and any liens or encumbrances or leases. The fee for such an abstract would be nominal. Such searches could also be initiated by telephone or telegraph with preliminary advice being given by telephone or telegraph to be confirmed in due course by the written abstract showing a clear title or otherwise. Documents would be delivered to the registry by mail or personally for inspection by the Registrar and registered if found to be in order.

Consideration could be given at a later date for the inclusion of radio equipment and other component parts in the Central Aircraft Registry. It is not contemplated that this equipment be included initially. It may be worthwhile at a later date to consider the introduction of enabling legislation or regulations to provide a standard bill of sale, chattel mortgage, conditional sales contract, discharge and any other form that may be deemed necessary. These standard forms could be frameworks which would permit the addition of any further clauses that may be necessary for the particular transaction. A standard form would facilitate the work of the Registrar.

Federal Jurisdiction

The enactment of legislation by the Parliament of Canada to provide for the creation of the proposed central registry for security interests in aircraft would be *intra vires* the general power of Parliament "to make laws for the peace, order and good government of Canada . . ." pursuant to Section 91 of the British North America Act. The object of such legislation would be to make compulsory the registration of security interests in aircraft in a public record to be administered by the Department of Transport. The constitutional cases to which reference is made below support the position that the enactment of such legislation is within the jurisdiction of the Parliament of Canada.

In the case of *Johanneson v. Rural Municipality of West St. Paul*,³ Rinfret C. J., affirmed the application of the decision of the Privy Council in the Aeronautics case :

³ [1952] 1 S.C.R. 292 at 302.

"Notwithstanding that the International Convention under consideration in the *Aeronautics* case was denounced by the Government of Canada as of April, 4, 1947, I entertain no doubt that the decision of the Judicial Committee is in its pith and substance that the whole field of aerial transportation comes under the jurisdiction of the Dominion Parliament. In the language of their Lordships at p. 77: "Aerial navigation is a class of subject which has attained such dimensions as to affect the body politic of the Dominion."

Mr. Justice Kerwin⁴ clearly set forth his views of the case in the following terms :

"Now, even at the date of the *Aeronautics* case, the Judicial Committee was influenced (i.e. in the determination of the main point) by the fact that in their opinion the subject matter of air navigation was a matter of national interest and importance and had attained such dimensions. . . It is with reference to this phase of the matter that Viscount Simon's remarks in *A.-G. Ont. v. Canada Temperance Federation* (1946), 2 D.L.R. at p. 5, A.C. at p. 205, 85 Can. C.C. at pp. 229-30, must be read. What was there under consideration was the Canada Temperance Act, originally enacted in 1878, and Viscount Simon stated: 'In their Lordship' opinion, the true test must be found in the real subject matter of the legislation: If it is such that it goes beyond local or provincial concern or interests and must from its inherent nature be the concern of the Dominion as a whole (as for example in the *Aeronautics* Case . . . and the *Radio* Case . . .), then it will fall within the competence of the Dominion Parliament as a matter affecting the peace, order and good government of Canada, though it may in another aspect touch upon matters specially reserved to the provincial legislatures.' This statement is significant because, while not stating that the *Aeronautics* case was a decision on the point, it is a confirmation of the fact that the Board in the *Aeronautics* case considered that the subject of aeronautics transcended provincial legislative boundaries."

Mr. Justice Kellock⁵ emphasized the extent to which the jurisdiction of Parliament prevailed in the *Johanneson* case :

"Once the decision is made that a matter is of a national interest and importance, so as to fall within the peace, order and good government clause, the provinces cease to have any legislative jurisdiction with regard thereto and the Dominion jurisdiction is exclusive. If jurisdiction can be said to exist in the Dominion with respect to any matter under such clause, that statement can only be made because of the fact that such matters no longer come within the classes of subject assigned to the provinces. I think, therefore, that as the matters attempted to be dealt with by the provincial legislation here in question are matters inseparable from the field of aerial navigation, the exclusive jurisdiction of Parliament extends thereto."

Mr. Justice Estey⁶ in the same report quoted with approval from the Privy Council decision in the *Aeronautics* Case :

⁴ [1952] 1 S.C.R. 292 at 308.

⁵ [1952] 1 S.C.R. 292 at 311-12.

⁶ [1952] 1 S.C.R. 292 at 317.

"...There may be a small portion of the field which is not by virtue of specific words in the B.N.A. Act vested in the Dominion; but neither is it vested by specific words in the Provinces. As to such small portion it appears to the Board that it must necessarily belong to the Dominion under its power to make laws for the peace, order and good government of Canada. Further, their Lordships are influenced by the facts that the subject of aerial navigation and the fulfilment of Canadian obligations under S.132 are matters of national interest and importance; and that aerial navigation is a class of subject which has attained such dimension as to affect the body politic of the Dominion."

In a decision of the British Columbia Court of Appeal in 1959,⁷ the jurisdiction of the Parliament of Canada in the matter of aeronautics was again upheld. The appellant had submitted that the Aeronautics Act and regulations enacted pursuant thereto were *ultra vires* of the Parliament of Canada insofar as they presume to regulate and control the operation of aircraft operating solely within a province.

Mr. Justice Coady⁸ delivered the judgment of the court :

"It is clear that effect cannot be given to this submission. The jurisdiction of the federal Parliament is concluded by the judgments in the following cases: *In re. Regulations and Control of Aeronautics in Canada*; *In re. By-Law 292 West St. Paul R.M.*; *Johanneson v. West St. Paul R.M.* It follows therefore that the Act and the regulations in issue here are *intra vires* and this submission of the appellant must be rejected."

Certain railway cases through analogy may be cited in support of the proposition that the Parliament of Canada possesses exclusive jurisdiction over almost all aspects of civil aviation.

In the case of *Attorney-General of Canada v. C.P.R. and C.N.R.*,⁹ it was held :

"That Parliament, competent to provide for the acquisition of land for a railway and to limit by conditions the extent of acquisition, cannot also provide the reasonable means for insuring that limitation would, in the particular circumstances, expose the substantive power to virtual nullification. Powers in relation to matters normally within the provincial field, especially of property and civil rights, are inseparable from a number of the specific heads of S.91 under which scarcely a step could be taken that did not involve them. In each case the question is primarily not how far Parliament can trench on S.92, but rather to what extent are property and civil rights within the scope of the paramount power of Parliament."

Another relevant case is that of *C.N.R. et al. and C.P.R. et al. v. Attorney-General of Saskatchewan*,¹⁰ in which the question arose as

⁷ *Jorgenson v. Pool* [1959] 28 W.W.R. 265, 124 Can. C.C. 39.

⁸ [1959] 28 W.W.R. 265 at 266.

⁹ [1958] 12 D.L.R. (2d) 625 at 627.

¹⁰ [1948] 1 D.L.R. 580 at 585.

to whether various Saskatchewan labour acts applied to interprovincial railway companies. In his judgment Macdonald, J. A. made the following statement :

“For it must not be overlooked that a constitution is being construed, and the expressions used should in my opinion receive a broad, liberal interpretation that will effectuate the intention of Parliament.”

“In this view the employees of the plaintiffs are under the exclusive legislative jurisdiction of the Parliament of Canada, and the provincial acts in question cannot affect them.”

In a 1964 Exchequer Court of Canada decision,¹¹ the issue involved the jurisdiction of the Government of Canada as regards its power to expropriate and aeronautics. Mr. Justice Dumoulin discussed the extent of federal jurisdiction in the following terms :

“Reverting here to the moot question initially raised: invalidity of the *Expropriation Act*, the fundamental answer is that a Government shorn of such a power would lack one of the essential attributes of sovereignty, one pertaining to the furtherance of Peace, Order, and generally speaking, to the good Government of the country (cf. *B.N.A. Act*, 1867, s.91), and to its Defence. This obvious principle does not call for more ample elaboration. Basic legislation governing the taking of property and other rights is found in s.3, s-s. (b), sec. 2(g) of the *Expropriation Act*, and also in the *Aeronautics Act* (R.S.C. 1952, chapter 2, s.3, s-s. (c).”

The cases referred to establish the jurisdiction of the Parliament of Canada over almost all aspects of civil aviation.

Further authority with respect to the general power of Parliament to legislate for the peace, order and good government of Canada is found in *Pronto Uranium Mines Ltd. and Algoma Uranium Mines Ltd. v. Ontario Labour Relations Board, et al.*¹³ This Ontario High Court Judgment in 1956 concerned a question of whether the enactment of the Atomic Energy Control Act, R.S.C. 1952, c.11, as amended, and Regulations thereunder, was valid legislation for the peace, order and good government of Canada. Mr. Justice McLennan¹⁴ delivered the judgment of the Court :

“In this day it cannot be said that the control of atomic energy is merely of local or provincial concern, and in my opinion it is a matter which from its inherent nature is of concern to the nation as a whole and the Act and Regulations are within the powers of Parliament to make laws for the peace, order and good government of Canada.

¹¹ [1964] 1 Ex. C.R. 274, at 278; *Shepherd v. The Queen*.

¹³ [1956] 5 D.L.R. (2d) 342, [1956] O.R. 862.

¹⁴ [1956] 5 D.L.R. (2d) 342.

If I am correct in this conclusion, then the production of the raw materials for developing atomic energy is a work, undertaking or business within the legislative authority of the Parliament of Canada, and Part I of the *Industrial Relations and Disputes Investigation Act* applies in respect of employees who are "employed upon or in connection with... [such] work, undertaking or business."

"To paraphrase the language of Rand, J. in Reference re Validity of Industrial Relations and Disputes Investigation Act [1955], 3 D.L.R. 721 at pp. 746-7, S.C.R. 529 at p. 554, it would be incompatible with the power of Parliament to legislate with respect to the control of atomic energy for the peace, order and good government of Canada if labour relations in the production of atomic energy did not lie within the regulation of Parliament."

It is submitted that the constitutional cases to which reference is made above are authority to establish that the Parliament of Canada has exclusive jurisdiction to establish in Canada a central registry to record title to and all encumbrances against aircraft and aircraft engines.

The submission of the Canadian Bar Association emphasized that the proposed legislation in no way changed the substantive laws of the provinces and was, in fact, similar in principle to recording laws in the provinces for other kinds of personal property and real property. The legislation would merely provide that no conveyance or instrument affecting title to an aircraft shall be valid until filed for recordation, except as to parties to the instrument or those with actual notice of its existence. Once an instrument is filed for recordation under the legislation, all persons would be deemed to have constructive notice of its existence and its effect on the title to the aircraft involved. While recordation does afford notice to the world of the existence of an instrument affecting title, it does not purport to establish the substantive validity of the instrument. As in the case of other recording systems, substantive validity of a recorded instrument remains a question of local law i.e. the law of the provinces would apply.¹⁵ By substantive validity is meant compliance with those basic legal requirements of the governing law which must be met to constitute a valid conveyance as between two individuals. Among these legal requirements are the statutes and court decisions prescribing the content and form of such a conveyance, including the

¹⁵ Assuming the subject-matter of air transport to be within the authority of Parliament, it follows, in the words of Viscount Simon in *A.-G. Ont. v. Canada Temperance Federation*, [1946] A.C. 193 at p. 206: "Nor is the validity of the legislation, when due to its inherent nature, affected because there may still be room for enactments by a provincial legislature dealing with an aspect of the same subject insofar as it specially affects that province."

adequacy of the description of the property conveyed, the legal capacity of the parties to contract, questions of value, consideration, good faith, fraud, misrepresentation, and other similar matters which go to the transfer or creation as between the parties of a valid title or interest in the property purported to be transferred or created. The substantive validity of the instrument of security would continue to be determined by the appropriate laws of the province by which such instrument is governed and no change in this situation would result from the establishment by the Parliament of Canada of the central registry or the requirement that the registration in future of security interests in aircraft be compulsory.

Conclusion

Aviation will continue to be important to Canada both as a means of transport and as a tool in developing otherwise inaccessible parts of the country. The growth of aviation supports the proposal for the establishment of the central registry and for the subsequent ratification by Canada of the Geneva Convention. The present lack of such a registry makes it impossible to sell aircraft and finance such sales on a sound commercial basis. It is time for the Government of Canada to take action and to substitute order and predictability in the matter of aircraft titles for the uncertainties that now exist.
