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Parlez-vous Français?

Treaty precludes award of damages for language rights violation

One of the most interesting aspects of aviation law involves the determination of which legal regime applies to a particular case. Because aircraft fly across provincial and national borders, lawyers practising in the field of aviation may find themselves dealing with provincial law, federal law, foreign law or international treaties. There are times when all of these laws may apply and there are times when conflicts between these laws must be resolved.

In *Thibodeau v. Air Canada*, 2012 FCA 246, the Federal Court of Appeal considered an apparent conflict between the *Montreal Convention* and the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.) (the "OLA"). This case resulted from a complaint filed by Michel and Lynda Thibodeau with the Commissioner of Official Languages. The Thibodeaus complained that Air Canada did not offer them service in French during two round trips between Canada and the United States.

In general terms, the *Montreal Convention* is an international treaty that governs passengers' claims against airlines for injury or death suffered during an international flight or when embarking or disembarking from an international flight. The *Convention* also governs claims for loss or damage to baggage and cargo, and delays in air carriage. The *Convention* entered into force in Canada on November 4, 2003, and is incorporated into Canadian law by the *Carriage by Air Act*, R.S.C. 1985, c. C-26. It is intended to unify and codify the rules governing international carriage by air, to provide greater certainty and predictability and to ensure protection of consumers.

The OLA requires Air Canada to provide its services in French. The OLA is meant to apply to federal institutions, but Air Canada's former obligations as a Crown Corporation were continued after the company was privatized. Under the OLA, courts may award damages in "appropriate situations."

Among other remedies, the Federal Court awarded the Thibodeaus $6,000 each in damages. On appeal, Air Canada argued that the Federal Court did not have jurisdiction to grant damages in respect of three of the violations, because these occurred on international flights, which were exclusively governed by the *Montreal Convention*.

The appellate court agreed, finding that the *Convention* precluded the awarding of damages for causes of action not specifically provided therein. It rejected the position that the *Convention* has no force except in cases where it provides for a remedy, and held that it constitutes a complete code in respect of the aspects that it expressly regulates. This includes air carriers' liability for damages, regardless of its source. The conflict between the *Convention* and the OLA was resolved in the following manner. The OLA states that courts may only award damages under the OLA "in appropriate situations." Accordingly, the Court ruled that it would not be appropriate to award damages under the OLA in situations where the *Montreal Convention* governs.

The exclusivity of the *Convention* as a remedy for claims in respect of international carriage was previously unsettled in Canada, with courts in different countries taking opposing views. Some have held that the *Convention* is the exclusive legal regime under which a claim may be made, and that if it is silent on an issue, a remedy is not available. Others have held that where a cause of action is not provided by the *Convention*, it may nonetheless be available under domestic law.

The Federal Court of Appeal's decision may not be the last word on this issue, however, as the Thibodeaus have sought leave to appeal to the Supreme Court of Canada.

Michael Dery is a partner at Alexander Holburn Beaudin + Lang LLP. His practice concentrates on aviation and transportation law. He provides counsel and advice to clients on a variety of litigation and regulatory matters particular to the aviation industry.