



SEAPLANE TOURS AND MUNICIPALITIES

By : *Me Joanne Côté*, lawyer

On March 4 2008 the Appeal Court of Quebec rendered judgments regarding two cases¹ on the same subject that had been heard in October 2007. The matters before the court were questions of federal/provincial jurisdiction and the Aeronautics Act, and agricultural zoning as per the terms of An Act respecting the Preservation of agricultural land and agricultural activities, (R.S.Q. c. P-41.1) as well as municipal zoning regulations adopted by virtue of An Act respecting Land use planning and development, R.S.Q. c. A-19.1.

The first matter was with regard to establishing a landing strip and a hangar to repair airplanes in the agricultural zone of the province.

The second case was about the establishment of a business to transport people by seaplane from a lake. The business was located in a zone where this type of air transportation business was prohibited along lakeshores.

The fact that aviation and airports fall under federal jurisdiction by virtue of the Canadian constitution was not contested.

Nevertheless our courts recognize that provinces can intervene in an ancillary manner in matters of federal jurisdiction when the issues concern legislation or regulations on subjects affecting provincial jurisdiction.

This was the argument the attorney-general of Quebec used in representing the "Commission de protection du territoire agricole du Québec" and the municipality in these cases.

TELUS MUST COMPLY WITH THE AUTHORITIES WITHOUT FINANCIAL COMPENSATION

By : *Me Isabelle Gingras*, lawyer

There is a provision in the Criminal Code that allows courts to order third parties such as banks or telecommunication service providers to provide documents that are required for criminal or penal investigations

To comply with this provision, Telus was often asked to provide call records regarding certain clients. In 2004, Telus responded to 2823 mandates of this type. Telus estimated that the cost of answering these requests was about \$662 000.

Telus sought financial compensation for responding to these requests for documents.

The Supreme Court of Canada ruled on this matter on March 28 2008 and decided that Telus could not receive compensation for cooperating with authorities.

¹ *Lacombe et al. c. Municipalité de Sacré-Cœur*, C.A. 200-09-005546-061, March 4 2008 and *Laferrrière c. Lortie et Procureur général du Québec*, C.A. 200-09-005674-061, March 4 2008.

The Supreme Court determined that, considering the company's profits, \$662 000 was not an excessive cost for Telus. In fact the amount was equivalent to \$54 for a person earning a salary of \$100 000.

The court also compared the situation to that of all citizens required to appear in Court as witnesses or jury members without any realistic financial compensation.

Contributing the workings of the justice system is simply a social and ethical obligation that all good citizens assume and now all banks and communication companies must assume these obligations as well!

SOLD AND ACCEPTED AS SEEN: ARE YOU REALLY PROTECTED?

By : *Me Isabelle Gingras*, lawyer

With an increase in cases regarding hidden defects and the issue of publicizing these defects, many vendors want to protect themselves against lawsuits when they sell their property. Some vendors try to protect themselves by adding a well-known clause such as "the buyer declares to have seen and inspected the property and declares that he is satisfied". But does this type of clause really protect the vendor from a possible lawsuit for hidden defects?

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However it is possible for vendors to contractually exclude a guarantee against hidden defects. But the clause must be much less ambiguous than a "seen and accepted" clause . The contract must state that " the buyer purchases at his own risk and peril", and that "legal guarantee is excluded". To be sure your clause is valid and to avoid unpleasant surprises, contact us!

Unfortunately this clause cannot protect the vendor against suits for hidden defects that the buyer may discover. Because by definition these defects are hidden, the buyer cannot discover and accept them. Therefore the vendor remains legally responsible and can be sued.

NEWS FROM OUR FIRM

- ♦ On April 15th, **Me Stéphane Sansfaçon** from our firm's environment and municipal law division was invited by the Fédération québécoise des Municipalités (FQM) to teach a day-long condensed version of the training course regarding the roles and responsibilities of elected representatives.
- ♦ We congratulate **Me Alexandre McCormack** who was sworn in on April 11, 2008.
- ♦ On April 22nd, **Me Joanne Côté** will be interviewed on Radio-Canada's *LA FACTURE*.
- ♦ We welcome **Me Félix Rochon** who has joined our team in Saint-Jérôme.



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