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NEW FRONTIERS IN THE LAW OF THE AIR

The following is part of a recent address by Mr. Paul Martin, Secretary of State for External Affairs, at the second International Conference on Air and Space Law at McGill University, Montreal:

...Aviation today is mainly an international activity requiring, for safety's sake alone, the most complex co-ordination of techniques and laws. Air law is the result of a compromise between national drives and international imperatives. It is a conglomeration of specific branches of national and international law, both private and public.

Aircraft of one nation travelling through the airspace of several states, landing in others and carrying large numbers of passengers, create many problems of conflicting legal systems. Without determined and imaginative efforts on the part of those concerned with air law, it will be increasingly difficult for the law to keep pace with social and technological development.

But I am not saying anything startling, or even new. The facts are obvious. Nevertheless, the extent of the danger due to the unprecedented growth of the industry has been seriously underestimated.

The Chicago Convention of 1944 was a major step towards international legal standardization. It is often called "the Constitution of Air Law" or "the Charter of the Air". At Chicago the strong Canadian delegation, headed by C.D. Howe, then Minister of Reconstruction, played an active role in support of an international air authority. We were strong proponents of the "freedoms of the air" - a term which the Honourable Adolf A. Berle, then head of the American delegation, attributed to Canada. In fact, "Freedom of the Air", the title of your present meeting, is what the late Mayor LaGuardia referred to at Chicago as the "meat" of the Convention, for it lay at the very

centre of the problem of the number of services that ought to be permitted on a particular route and the share of each country should have in these services.

The Chicago Convention was but the first chapter, albeit a successful one, in the work of international co-operation which Franklin Roosevelt described then as part of "a great attempt to build enduring institutions of peace". The Canadian Government continues to subscribe fully to this ideal, for as C.D. Howe said, "if we cannot devise a working system of co-operation and collaboration between the nations of the world in the field of air transport, there will be a smaller chance of our enjoying peace for the remainder of our lives"....

PROBLEMS OF THE FUTURE

...The trend today is towards greater aircraft productivity and more and longer passenger trips. This means larger, faster, costlier and more complex aircraft, flying more often over greater distances. Foreseeable technological developments include "jumbo" jets, supersonic transports, "hovercraft", vertical and short take-off aircraft and, eventually, hypersonic vehicles propelled partially by rocket motors with speed and performance characteristics akin to those of spacecraft. Large investments will be required by all governments and airlines not only for these more sophisticated vehicles but also for related facilities to accommodate the expected increase in traffic. In Canada, we are acutely aware of these problems and are having to revalue estimates we made only a few years ago. The new Canadian Transport Commission is part of our general effort to improve methods of study and co-ordination in the whole field of transportation, including aviation....

In 1964, Canada faced domestically something similar to what is now a common international problem — the competing claims and interests of large airlines. The Government decided that the international air services provided by Canadian airlines should be integrated into a single plan which would avoid unnecessary competition or conflict. This means that, outside Canada, neither of our two major airlines (Air Canada and Canadian Pacific Airlines) serves any point served by the other. The Government also made it clear that any development of competition in domestic mainline services must not put the Government airline... "into the red". In addition, Canadian regional air carriers were given an enlarged role in relation to domestic mainline carriers. The application of these three principles has strengthened Canada's position in world aviation. For instance, since 1964 there have been successful negotiations with several countries, designed to achieve international route extensions and improvements for both Air Canada and Canadian Pacific Airlines.

Projecting this domestic example onto the international scene, would be to suggest that perhaps the logical course for public and private international air law is in the direction advocated by the late John Cobb Cooper, the first Director of the then McGill Institute of International Air Law, of one set of rules to govern all flights at whatever altitude.

LAW AND OUTER SPACE

If international air law is to abandon the techniques of bilateral negotiation, with its jungle of complicated agreements based on the narrow application of national sovereign rights, then it could probably take a lesson from developments in the law of outer space. A new frontier for the law of the air figuratively and literally lies at the fringe of outer space. In 1963, the UN Declaration of Legal Principles Governing Activities by States in the Exploration and Use of Outer Space, marked the end of the speculative phase in which the "general pundits" conjectured on whether certain maritime and air law principles of national sovereignty and freedom of the seas were applicable in outer space. Events since then, such as the recent Outer Space Treaty, suggest that a new legal order is emerging — that of the world community acting for the common good and welfare of all mankind.

The main provisions of the outer-space treaty are that outer space, the moon and other celestial bodies shall be explored and used for peaceful purposes only. Like the Limited Test Ban Agreement of 1963, it is part of a series of international agreements leading towards general and complete disarmament. Hopefully, more agreements are on the way — a non-proliferation treaty and, interestingly, an item now before the General Assembly calling for a treaty on the peaceful use of the sea-bed and the ocean-floor and their resources in the interests of mankind. First outer space, now the sea-bed and ocean-floor. What environment will be next? Air space? What a blessing it would be if by universal agreement the use of the air were reserved exclusively for peaceful purposes, in the common interest of all men....

FACTORS REQUIRING LEGISLATION

Let us look for a moment at a few problems which will require international legal action. A major problem facing us all in this machine age is noise. We are continually bombarded with noise, and despite our increasingly elastic thresholds of tolerance, jet aircraft have multiplied this attendant disturbance to the point of nuisance. Unless there are some major technological improvements, the larger and faster jets with their greater power take-offs and shallower landing paths will compound this problem. There are several possible solutions: airport curfews, to enable some quiet periods; relocation of airports and runways and restrictions on building near them; and better insulation of dwellings and offices — but each of these national solutions will require some kind of international agreement to be made completely effective. I hope that the fifth Air Navigation Conference of ICAO (the International Civil Aviation Organization) starting in Montreal soon, will succeed in agreeing on an international standard unit for noise measurement as the first step towards an international agreement on aircraft noise. Perhaps international air lawyers could then produce regulations and provisions for their world-wide enforcement. The time may come when all new aircraft will be required to demonstrate that they do not exceed a set of internationally-accepted noise levels.

One of the agreements signed at Chicago was the International Air Services Transit Agreement — commonly known as "the two freedoms agreement" — in which freedom of mutual overflight was guaranteed. Such flights, if at supersonic speeds, promise to disturb and annoy those on the ground under the SST's flight path. Consequently, if overflight is to be permitted, international agreements will have to be reached on the level of the noise from the sonic boom to be tolerated.

Domestically, old common-law conceptions of property ownership from the soil upwards *usque-ad-coelum*, have been limited legislatively and judicially to meet the requirements of country-wide air travel. To have recognized private claims to air space would have interfered with development of aviation in the public interest. The extent to which airlines will be able to take advantage of technological progress in aviation, will depend upon the willingness of countries to exchange "freedom of the air" on a multilateral basis.

Another specific problem is that of liability. In 1965, the United States denounced certain provisions of the Warsaw Convention of 1929 limiting the liability of air carriers for personal injury or death of passengers in international air carriage. This denunciation was withdrawn last year when most of the world's major airlines entered into an agreement in which they accepted considerably increased limits of passenger liability. It would not seem advisable, however, that a matter of this nature, which is really one of governmental responsibility, should continue to function for too long as an agreement between carriers. It is time some fresh attempts were made to draft new protocols perhaps introducing some flexibility in the amount of the limits of liability....

TEMPORARY TAX INCREASES

Mr. Mitchell Sharp, Minister of Finance, made the following statement to the House of Commons on November 10:

...The Government has decided to introduce new fiscal measures including temporary tax increases later this month. The Government proposes that the arrangements for introducing and debating these be the subject of consultation through the usual channels.

These tax measures will be part of an integrated programme to check the inflation of prices and costs now occurring in Canada, and to reduce excessive pressures on our capital markets. Higher taxes in the coming year will be a better and fairer means of covering our expenditures than attempting to increase our borrowings to levels that could only be reached by inflationary methods that would increase prices further. Prices and costs are rising at rates which clearly require some restraint through fiscal policy as well as by other means.

When our proposed tax increases are combined with restrictions on Government spending programmes also to be announced later this month, and substantial reductions in our lending programmes, the Government will be able to hold its overall net cash requirements and its consequent demands on the capital market to less than \$750 million in the next fiscal year, apart from unforeseen changes in our exchange reserves. This is less than half our cash requirements this year. The Government has also decided that budgetary expenditures next year, apart from Medicare and apart from the writing-off in our accounts of Expo deficits, will be held to \$10,300 million. This means that we will limit the increase in expenditures to about 4.5 per cent between this year and next — a rate of increase less than half of those of recent years. To the extent that Medicare proceeds next year, we will as already indicated introduce further taxes to meet the costs or make offsetting reductions in existing expenditure programmes. We will not increase our borrowings to finance it.

INDIAN HOUSING LOANS

A new programme to improve the quality of houses being built on Indian reserves was announced recently by Indian Affairs Minister Arthur Laing. The Minister said that arrangements had been made with Central Mortgage and Housing Corporation to provide extra housing funds for loans to employed Indians who live in reserve communities.

Under the existing \$112-million Reserve Improvement Programme, the Department may make a grant for a house according to the applicant's income, to a maximum of \$7,000. Any additional cost must be paid by the family or the band. The new plan will enable an Indian family to borrow additional funds and to build larger or better quality houses.

Up to now Indians could only obtain CMHC supplemental financing for houses on reserve com-

munities when the loans were backed by the band funds. Under the new plan, the Department of Indian Affairs will guarantee the loans and band members with limited funds will be able to take advantage of the programme. The Minister said that both the Department and CMHC had been concerned about the problem of financing better quality reserve housing. "This new programme will go a long way to enabling employed Indians to live in the reserve communities where they can be of great help to their fellow band members," Mr. Laing said.

Each Indian who takes advantage of the programme must be recommended by his band council and in cases of default, the property reverts to the council.

IMMIGRATION APPEAL BOARD

The new Immigration Appeal Board Act, passed in the House of Commons last March, was proclaimed on November 13, Manpower and Immigration Minister Jean Marchand announced recently. Mr. Marchand said that the Board would begin hearings almost immediately.

The new Board has much broader responsibilities and powers of decision than the former Board, and is entirely independent of the Department. It will hear appeals against all deportation orders and is authorized to quash or stay deportation on humanitarian and compassionate considerations as well as on legal grounds. The Board's decision will be final, subject only to appeal to the Supreme Court of Canada on questions of law.

The new Board will also be empowered to consider, for the first time, appeals by some classes of sponsors if their applications to bring relatives from outside Canada are refused by immigration officials.

The chairman of the new Board is Miss Janet Vivian Scott of Toronto, who has been preparing the work of the Board since her appointment last August.

EARNINGS OF PHYSICIANS

The Department of National Health and Welfare reports that the average earnings of physicians in private practice in Canada increased substantially between 1957 and 1965.

Average gross earnings for each doctor went up from an estimated \$20,800 in 1957 to \$32,800 in 1965, a percentage change of 57.7 per cent, and an average annual rate of increase of 5.9 per cent over the period.

Cross professional earnings include provision to meet the expenses of a medical practice, such as office rent and costs of equipment. The average expenses of a practice increased from \$7,950 in 1957 to \$10,750 in 1965, but declined as a percentage of gross professional earnings from 38.2 per cent in 1957 to 32.7 per cent in 1965.

Accordingly, the average net income from professional practice increased at a slightly faster rate than average gross earnings, the average annual increase being 7.0 per cent and the cumulative percentage rise, 71.7 per cent. The average net professional earnings of doctors were \$12,852 in 1957, and \$22,064 in 1965.

REASONS FOR RISE

Many factors have contributed to the rise of physicians' earnings. Among these have been increases in the total demand for physicians' services, stimulated partly by the growth of medical insurance arrangements that have tended to remove financial disincentives to the seeking of medical treatment. Probably, the volume of service given by each doctor has increased through longer hours of work and more effective use of time, equipment and auxiliary personnel. Improved collections of fees is an additional factor, which reflects the upward trend in general affluence and the assurance of payment under medical insurance arrangements; and fees have been moving up, along with the general rise in prices of other services purchased by consumers.

SASKATCHEWAN EXAMPLE

Following the introduction of the public medical care insurance plan in Saskatchewan on July 1, 1962, the average gross professional earnings of physicians in the province were \$35,657, 32 percent more than in 1961 the last full year before the programme; average net earnings of \$21,625 were 37 percent above the 1961 level. The fee schedule remained practically unchanged during this period, with payment by the provincial plan at 85 per cent of the listed fees. But the advent of the programme brought about more careful use of the fee schedule, certainly of collection, higher utilization of services, and longer hours of work. Doctors' earnings would have increased somewhat without the medical care insurance programme, and some income in 1963 represented delayed payments for services rendered in 1962. Also, the number of doctors was reduced temporarily. Nevertheless, the evidence indicates that the Saskatchewan medical-care insurance plan had a significant initial impact on physicians' earnings.

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NEW ALBERTA MUSEUM

The official opening of the Provincial Museum and Archives in Edmonton, Alberta's project under the Confederation Memorial Grants Programme, will be held in December.

The Museum and Archives is located on the site of the former Government House, which was selected for its convenience to public transportation, its commanding view of the North Saskatchewan River valley and its natural surroundings. The site also allows for extensive future expansion of both museum and archives, and has the additional value of being of historical interest itself. The old Government House mansion has been maintained as part of the complex, as it is physically sound and is one of a few dignified older pieces of architecture in Alberta.

Under the Confederation Memorial Grants Programme, the federal Centennial Commission is contributing \$2.5 million to each province (which must be matched by the province) for the construction of buildings for cultural purposes, to be located, whenever possible, in the provincial capital.

The aim of the Museum is to establish a free public collection to portray and preserve the history of Alberta and provide related educational services; the Archives will preserve Alberta historical documentary materials. The staff of the Museum and Archives Branch of the Department of the Provincial Secretary have been at work for more than two years, assembling specimens, artifacts and documents, cataloguing and preparing them for display in the new building.

Besides the expected displays featuring Indian artifacts, exploration, fur trade, settlement and agriculture, the Museum will also show several aspects of early industry and commerce.

FUTURE DISPLAYS

Planning for future displays includes the portrayal of daily life in the home and the community. A special room will highlight the special features of the many ethnic groups in the province. Religious life, creative activities, prominent people, communities, regions, military organizations and firearms will be subjects for display.

Extensive exhibits of Alberta's history in communications, transportation, government, politics and organizations have also been planned.

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ESTIMATED NUMBER OF STUDENTS

There is a slightly larger number of students in Canadian schools and universities this year than was expected a year ago, mainly because of a higher level of immigration.

The Dominion Bureau of Statistics estimates that 21,229 schools are in operation, with a full-time enrolment of 4,109,400 pupils in elementary schools, 1,322,300 students in secondary schools, 23,400 students in teachers' colleges, 42,600 students in technical institutes and community colleges, and 268,000 in universities.

Estimates show also that there are 23,870 students enrolled in nursing-diploma courses at hospital schools; 17,630 students in private trade schools; 22,530 students in private business colleges; 2,960 pupils in schools for the deaf; and 770 pupils in schools for the blind.

Ontario has the largest enrolment - estimated to exceed two million students for the first time in any province. The enrolment for Ontario represents 79.1 per cent of the 5-24 population, compared to 77.7 per cent in British Columbia, the province with the second-highest ratio. The lowest-enrolment ratios for the 5-24 population are estimated for New Brunswick with 65.6 per cent and Newfoundland with 66.0 per cent.

The total expenditure for formal education in 1967 is estimated at over \$4.5 billion.

WHALE-TAGGING PAYS OFF

The first positive indication that the white whales of Hudson Bay travel great distances has been obtained by the capture of one of them at Repulse Bay, about 500 miles north of the point of which it had been tagged. This partly solves a marine mystery that has hampered efforts of the Fisheries Research Board of Canada to determine what recommendations to make to persons concerned with the exploitation and survival of the white whales, or *beluga*, of arctic and sub-arctic regions.

Marine scientists, who need to know whether *beluga* populations are local, or whether they intermingle and move up and down the coast, and deep into the Bay, have had no means of solving this problem, except by guess-work based on such uncertain factors as the size of the animals and limited observations made from aircraft.

Last July, Dr. D.E. Sergeant of the Research Board's Arctic Biological Station at Ste-Anne-de-Bellevue, Quebec, organized a tagging expedition to the estuary of the Seal River, 30 miles north of Churchill, Manitoba. About 150 *beluga* were tagged, some by special harpoons that could be withdrawn when the tag had been attached to the hide of the animals, others by tags attached by hand to the dorsal muscle after the whales had been driven into the shallows, where they could be held by ropes during the tagging operation.

FIVE HUNDRED MILES IN TWO MONTHS

The recovered tag, one of the harpoon type, which was taken from a *beluga* captured in a net by an Eskimo hunter three miles from Repulse Bay, proved that it had travelled about 500 miles in two months, in a northwesterly direction. This information tends to confirm the belief previously held by Dr. Sergeant and other scientists that *beluga* of the Eastern Arctic spent the winter in western and northern Hudson Bay and moved south in the summer. The knowledge helps determine the size of stocks and the possible limits of their utilization, and thus serves as a preventive against over-exploitation. The *beluga*, an important factor in the economy of Indians and Eskimos, provide oil, meat and leather. Commercial exploitation is at present on a relatively small scale in Hudson Bay.

LABOUR-MANAGEMENT COMMUNICATION

Labour Minister J.M. Nicholson recently told a labour-management area conference in Corner Brook, Newfoundland, that, in seeking better communications, it was going straight to the heart of today's difficulties in labour-management relations.

Addressing the opening session of the conference, Mr. Nicholson said: "The responsibilities of labour and management are growing heavier all the time. New problems, for example those of technological change, are being overlaid on more historic issues, and the complexities that result cry out for more effective study, consultation and planning."

He pointed to joint labour-management consultation committees as one way of achieving this. Such committees, he said, "offer both parties a way of communicating that they could never achieve if their relations were confined to periodic bargaining sessions".

Mr. Nicholson warned that communication in industrial relations required goodwill and frankness. "It demands," he said, "that we abandon the set position, the catch-phrase, the appeal to emotion. It demands hard work."

"If labour and management abdicate their responsibilities," he added, "there will be a growing demand for more government intervention, if only to protect the public interest. And if we come to depend on government intervention to extricate industrial relations from its difficulties, then the whole system of free collective bargaining is in jeopardy."

CANADA PENSION PLAN COMMITTEE

Health and Welfare Minister Allan J. MacEachen has announced the appointment of a Canada Pension Plan Advisory Committee to review the operation of the legislation governing the national pension plan, the state of the investment fund and the adequacy of coverage and benefits under the relevant act.

The Committee, which is to report its findings to Mr. MacEachen, will meet in Ottawa at least once a year and at such other times and places as it considers necessary. Its first meeting will be held in Ottawa in December.

Committee members represent employees, employers, self-employed persons and the general public.

UGANDA GAME SOURCE OF FOOD

A more efficient and cheaper method of producing meat for the protein-deficient diets of the people of Uganda is being developed by wildlife biologist John A. Bindemagel of Kitchener, Ontario.

Mr. Bindemagel, an adviser with the External Aid Office, is conducting an experiment in Uganda to prove that the African buffalo, Uganda Kob, antelope and other game animals are a better source of meat than cattle.

Systematic "game-cropping", he says, can produce more meat than cattle, and at the same time will ensure preservation of the wild animals now threatened by the growth of the cattle industry in the country.

The wild animals have an inherent resistance to the diseases and parasites that kill cattle, can go for long periods without water and can graze on certain grass that cattle cannot eat.

Mr. Bindemagel's work is a continuation of that started by Dr. John Tener of the Canadian Wildlife Service in 1963, and carried on by Pat Martin of the British Columbia Department of Fish and Wildlife.

Mr. Bindemagel went to Uganda in 1964 to help Mr. Martin, and eventually took over the project.

The game-cropping scheme has been operating in the Acholi district of Uganda for two and a half years, removing the annual surplus of buffalo and antelope and managing the game herds on a sustained yield basis. To help make it as efficient as possible, the Canadian Government has provided four three-ton, four-wheel drive trucks to be used in the hunting.

The programme has made a significant contribution to the local meat supply, and has also provided revenue for the Uganda Government.

WILDERNESS TUNNELS

At a cost of \$85 million, reports Canadian Industries Limited, a major copper-mining project involving the construction of nearly 12 miles of tunnel through otherwise impassable country is under way in northern British Columbia near the Alaska border. Three glaciers, one 1,875 feet deep, and mountain ridges as high as 7,000 feet, blanketed by a yearly 800-inch snowfall form the terrain through which the tunnel is being bored by the Granduc Operating Company.

Since tunnelling began in July 1965, more than four miles have been covered by three shifts working continuously. Progress has averaged from 55 to 65 feet a day, and, when conditions permit, as much as 80 feet a day. Installation of a method unique in Canada, the "Jacobs sliding floor", has speeded rock removal after drilling and blasting by permitting the switching of cars at the work face.

Granduc Mines, which is expected to be in operation in 1969, will probably realize 7,000 tons of copper daily.

COMMODITY EXPORTS

Canadian commodity exports were down 6.3 per cent in September, to \$852,100,000 from \$909,300,000 in September 1966. During the cumulative period,

however, they rose 11 per cent to \$8,349,200,000 from \$7,523,200,000.

Exports to the United States were up 10.3 per cent during the month, to \$571 million from \$517,600,000 last year, while exports to Britain, other Commonwealth and preferential-rate countries and other countries were down. Purchases by Britain dropped 8.2 per cent to \$87,600,000 from \$95,400,999, other Commonwealth and preferential-rate countries, 22.6 per cent to \$34,800,600 from \$45 million and other countries 36.9 per cent to \$158,600,000 from \$251,300,000.

During the cumulative period, exports to the United States increased 17.6 per cent to \$5,275,800,000 from \$4,487,600,000. Purchases by Britain were up 1.6 per cent to \$868,800,000 from \$854,800,000, and other Commonwealth and preferential-rate countries up 22.8 per cent to \$503,700,000 from \$410,100,000. Sales to other countries during the nine-month period were down 3.9 per cent to \$1,700,900,000, this year from \$1,770,700,000 in 1966.

NEW FRONTIERS IN THE LAW OF THE AIR

(Continued from P. 2)

Still another problem which may require international air law, is that of integration. There is a growing tendency towards private arrangements for international co-operation. There are pooling arrangements, airline unions and various regional efforts at multilateralism such as the Scandinavian Airlines System and Air Afrique and the proposed Air Union in Europe. The enormous cost of the next generation of aircraft will accelerate the merging process and, in turn, cause further difficulties in the negotiation of traffic rights, particularly if each of these new organizations considers its individual members to be one entity. Many bilateral agreements will become obsolete and require complicated renegotiation. On the brighter side, however, these same joint operational arrangements may well be regarded as useful precedents for future, far-reaching multilateral conventions....