



Aviation Finance Update: Canada

December 2018

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Blake, Cassels & Graydon LLP

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High Times: The Impact of the Legalization of Marijuana on Aviation

Auriol Marasco

Partner – Aviation & Aerospace Group

On October 17, 2018, Canada officially brought into force the legalization of recreational cannabis. The talks about legalization and its impact on the aviation industry have been an ongoing conversation since it was initially proposed.

Charged with handling “fitness for duty” concerns of medical state and impairment as they relate to aviation, Transport Canada has always taken a hard stance against any substance that may cause impairment. Regardless of whether something is illegal or not, if it jeopardizes the safety of passengers, the public or aviation as a whole, Transport Canada will prohibit it.

Through the *Canadian Aviation Regulations* (CARs), Transport Canada prevents a person from acting as a crew member “while using any drug (including cannabis) that impairs the person’s faculties to the extent that the safety of the aircraft or of persons on board the aircraft is endangered in any way.” This regulation existed prior to October 17, 2018, and Transport Canada has signalled that it does not intend to ease restrictions on the use of cannabis. Given the potential long-term effects of cannabis use on a person’s faculties, the issue arises whether any use of cannabis is to be permitted. Both Air Canada and WestJet, among other Canadian airlines, have issued statements that all pilots and those in safety-sensitive positions are prohibited from recreationally using cannabis, even when off-duty. This policy will likely be reviewed by the unions under the existing collective agreements. The use of cannabis by employees and how it can be restricted is also, of course, a concern of the aerospace manufacturing industry in Canada. Blakes has been asked by the Aerospace Industries Association of Canada (AIAC) to provide two seminars to its members on these issues.

IDERAS: More than Just a Smart Idea!

Chris Wong

Associate – Aviation & Aerospace Group

In Canada, financiers and lessors (creditors) have a variety of remedies available to them in the event aircraft operators or lessees (debtors) default on their financing or lease obligations. Central to these remedies is the ability of the creditors to take possession, deregister and export the aircraft. Since Canada is a “contracting state” under the Cape Town Convention on Mobile Assets and its related Aircraft Protocol (the CTC) and has lodged the necessary declarations, one such remedy available to creditors in Canada is an irrevocable deregistration and export authorization (IDERA).

An IDERA is a standing direction voluntarily issued by the debtor in favour of the designated creditor lodged with Transport Canada Aviation (TCA). An IDERA requires TCA to honour a request for deregistration and export made by its holder if the debtor defaults on its obligations to the creditor. The purpose of an IDERA is to remove an aircraft from the debtor’s possession as soon as possible, transfer control to the creditor and enable it to export the aircraft as necessary. Compared to other default remedies available to creditors, such as the courts, the main benefit of an IDERA is its ability to ensure that creditors will have the “expeditious” cooperation of TCA and other administrative authorities in Canada in connection with the deregistration and export of the aircraft.

An IDERA must specify a named authorized party or the person that the authorized party certifies as its designee as being the sole person entitled to procure the deregistration of an aircraft from TCA and its export and physical transfer from Canada. An IDERA cannot name more than one authorized party, and there cannot be more than one IDERA lodged at TCA with respect to the same aircraft. This simplifies the enforcement procedure for TCA so they need only to look to one authorized party and eliminates the possibility of competing IDERAs.

In order to be effective, the registered owner of the aircraft must file with TCA the executed IDERA in substantially the same form as prescribed by the CTC, and most importantly, the registered owner and holder of the IDERA must receive a stamped and acknowledged copy of the IDERA from TCA.

In order to revoke a lodged IDERA, the authorized party must consent in writing to the revocation and submit such consent to TCA.

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AWG: Indexing the Future of Compliance

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Since the Cape Town Convention on Mobile Assets and its related Aircraft Protocol entered into force on March 1, 2006, it has been ratified by 73 states as well as the European Union, making it the most successful private international law treaty ever adopted.

Building on the success of implementation and ratification of the treaty, the Aviation Working Group (AWG) has commenced work on the Cape Town Compliance Index to assess compliance by contracting states with the terms and intent of the treaty. Blakes is supporting the AWG by coordinating and analyzing various sources of data, including responses from leading aviation law practitioners in each contracting state, to generate a compliance scorecard for each state based on a number of variables, including legal and political risks. The Compliance Index is scheduled for publication at the end of 2019 and will be maintained on a semi-annual basis thereafter.

Regulating Drones

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This past summer, the federal government commenced two pilot projects involving emergency responders and select private companies operating unmanned aerial vehicles (UAV) beyond visual line-of-sight (BVLOS). The purpose of these projects is to gather safety information and help the government understand how to regulate such operations. Transport Canada has indicated that they have now completed a few operational tests and will continue their trials into 2019. The industry is anxiously awaiting the results as they will provide key indications as to how the BVLOS operations will be regulated.

The industry is also waiting for the modernization of the regulation of UAV operations within visual line-of-sight (VLOS). While draft regulations were released last year, Transport Canada signalled some departure from their content but are still aiming to release the regulations before the end of 2018.

Blakes Team News

As another great year winds down, the Blakes Aviation & Aerospace group welcomes a new Associate, Kirstie Moore. Kirstie joins Blakes after practising aviation law at a prestigious London firm in which her practice focused on aircraft financing transactions and will no doubt be a valuable asset for our clients.

Canadian Aviation in the News

Headlines

- Bill C-49 passed on May 22, 2018, and received royal assent on May 23, 2018. Among other things, the bill raised the foreign ownership limit in Canadian airlines from 25 to 49 per cent. Any single international investor may not hold more than a 25 per cent voting interest in a Canadian airline.
- On July 1, 2018, Bombardier and Airbus' partnership agreement pursuant to which Airbus acquired a 50.01 per cent stake in the CSeries commercial jet program took effect. The CSeries has been renamed the A220.
- On July 5, 2018, Boeing and Embraer announced the signing of a memorandum of understanding to establish a joint venture partnership composed of the commercial aircraft and service business of Embraer. Under the terms of the non-binding agreement, Boeing will hold an 80 per cent ownership stake in the joint venture.
- Air Canada was named Best Airline in North America at Skytrax Awards 2018.
- Air Canada's legal team was awarded a 2018 Innovatio Award for Law Department Management, impressing the judges with its "heavy lifting to make sure it kept up with the demands of its organization's growth."
- WestJet's ultra-low-cost carrier Swoop launched its maiden flight on June 20, 2018, from John C. Munro Hamilton International Airport to Abbotsford International Airport.

For more information about any of the above, please contact any member of the Blakes Aviation & Aerospace team.

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