

CAPE TOWN CONVENTION LEGAL ACTIVITY ANALYSIS¹

Produced by the Legal Advisory Panel to the Aviation Working Group

Reference: Canada, case 1 [2015]		
Date of Judgment	24 July 2015	
Case:	Dash 224, LLC v Vector Aerospace et or. 2015 PESC 27	
Relevant CTC/Protocol; (IR Rules & Procedures)	CTC Article 39 Protocol Article I (2)(b) and 2(e)	IR Rules and Procedures None
Relevant CTC Jurisdictions	Province of Prince Edward Island, Canada	

CTC Related Facts, Conclusions and Analysis

I. Facts

1. In April 2010, a Havilland Dash 8 aircraft, owned at the time by a Canadian company, Regional One Inc. (“**R1**”), was leased by R1 to Aerovais de Aviacon Regional Aires S.A. (“**Aires**”) and flown to Medellin, Colombia from Florida without the required customs documentation and registration.
2. Colombia’s national tax and customs authority, Direccion Seccional De Aduanas Medellin (“**DIAN**”) seized the aircraft in April 2011 due to import into Colombia from Florida “without the required customs documentation and registration having been completed” (para 4) and issued a forfeiture order forfeiting the aircraft to the Government of Colombia.
3. On September 2011, DIAN, a government agency acting on behalf of the Government of Colombia, donated the aircraft to the National Police of Colombia (“**NPC**”) for “use in non-commercial, public purposes”. (para 6)
4. Following the seizure and forfeiture of the aircraft and donation of it to NPC, R1 incorporated Dash 224, LLC (“**Dash**”) for the sole purpose of assuming the

¹ Unless otherwise indicated, Article references in Arabic numerals are to those in the Convention on International Interests in Mobile Equipment (**Convention**), and Article references in Roman numerals are to those in the Protocol on Matters Specific to Aircraft Objects (**Protocol**). The Convention, as modified by the Protocol, is referred to as the **CTC**. Paragraph number references in parentheses below are to paragraph numbers in the Court’s order.

rights associated with the aircraft and engines, and transferred and assigned all of its rights in the aircraft to Dash. Dash registered its interest in the engines in the International Registry thereafter.

5. In 2013, NPC delivered the two engines of the aircraft to Vector Aerospace Engine Services-Atlantic Inc. (“**Vector**”) in Prince Edward Island, Canada, for overhaul and repair work to be performed.
6. While such work was being performed Dash filed a motion seeking an interim preservation order requiring that the two engines remain in the possession of Vector in Prince Edward Island and requested a declaration for ownership of the aircraft, including its two engines.
7. Dash claims that the Colombian authorities breached the Cape Town Convention by not recognizing its interest that was registered in the International Registry.

II. Conclusions

8. The Court rejected that seizure by Colombian authorities breached the Cape Town Convention for the following reasons:
9. Firstly, the Court concluded that the Cape Town Convention, which was proclaimed into law in the Province of Prince Edward Island, Canada on December 17, 2013, was not in force when Dash initiated its efforts to gain possession of the engines in May 2013. (para 39)
10. Secondly, the Court found that Colombia had made a declaration in December 2007 under Article 39 of the Cape Town Convention. As such, Colombia expressly declared that tax matters (which include customs matters) have priority over registered international interests under the Cape Town Convention. (paras 40, 41 and 42)
11. Lastly, the Court noted that Dash’s registration on the IR was made long after the aircraft was seized, forfeited and donated, at which point neither R1 nor Dash had ownership of, or interest in, the aircraft vis-à-vis the sovereign state of Colombia. (para 41) As such, Dash did not have a valid interest to register.

III. Analysis

[Application of the Cape Town Convention]

12. This case represents the first decision by a Canadian court that analyses and applies the Cape Town Convention since its entry into force in Canada. The Court used the provisions of the Cape Town Convention and international treaty law to reach its decision. Specifically, the Court applied Article 39 of the Cape Town Convention, and the evidence as to the declaration by Colombia with respect thereto.

[Article 39]

13. The Court reaches its decision by giving effect to Article 39 and the declarations that Contracting States may make. In this case, the Court stated that

Colombia has made a declaration that tax matters, including customs matters, should have priority over registered interests. (para 41)

14. [Timing under Article 39]

The Court was right that Colombia's interests under Colombian law and the Article 39 declaration have priority over registered interests, but it should be noted that the timing of the registered interest should not have mattered even if Dash had a valid registrable interest in the aircraft and had registered its interest prior to the seizure, assuming for this analysis that the Article 39 declaration was based on the law of Colombia at the time of the declaration was made.

15. [Text of Colombia Article 39 Declaration]

The Court misquoted the Declaration. According to the UNIDROIT website, the Declaration of Colombia under Article 56 reads:

"In respect of Article 39 of the Convention, the employee rights and fiscal debts will have priority over an international interest registered under this Convention".

Whether a fiscal debt of Colombia was the basis for the forfeiture, and, if not, whether the forfeiture may technically have been outside of the Article 39 provisions was not raised in the Court's decision.

16. [Text of Protocol Article I (2)(b) Aircraft Engines and (2)(e) Airframes – Potential that Airframe and Aircraft Engines did not fit Defined Terms]

The Court did not address the potential issue that the Convention and Protocol did not apply to the airframe and aircraft engines at all because, as referenced in paragraph 3 above, the Court had stated that the aircraft had been donated to the NPC for "use in non-commercial, public purposes". The Protocol defines the terms "aircraft engines" and "airframes" as being, in each case, aircraft engines and airframes "(other than those used in military, customs or police services)".

IV. Annotations Reflecting Subsequent Judicial and Legislative Developments

N/A