

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Christel Juergensen, Respondent

LEGISLATION:

Aeronautics Act, S.C., c. A-2, s. 7.7

Canadian Aviation Regulations, SOR/96-433, ss. 602.96(3)(a), (b)

Near Collision, Conflicting Traffic

Review Determination
Samuel J. Birenbaum

Decision: October 25, 1999

On balance of probability I am convinced by the evidence presented that the Respondent flew the aircraft in the manner described by witnesses on September 22, 1998 and thus confirm the Minister's assessment of a monetary penalty of \$500.00. That amount, made payable to the Receiver General for Canada, must be received by the Civil Aviation Tribunal within fifteen days of service of this determination.

A **Review Hearing** on the above matter was held Tuesday, September 28, 1999 at 10:30 hours, at the Colberg Court House in Peterborough, Ontario.

BACKGROUND

A Notice of Assessment of Monetary Penalty in the amount of \$500.00 was sent by registered mail to Mr. Juergensen dated May 12, 1999. The notice states the following:

Pursuant to section 7.7 of the Aeronautics Act, the Minister of Transport has decided to assess a monetary penalty on the grounds that you have contravened the following provision(s):

Canadian Aviation Regulations, s. 602.96(3)(a), in that on September 22, 1998, you as pilot in command of Maule M5 aircraft registered C-GPYC, while operating at an aerodrome, failed to observe aerodrome traffic for the purpose of avoiding a collision. Specifically, you took off from runway 27 at Peterborough Airport without observing another aircraft landing at that time on runway 09, causing the landing aircraft to take collision avoidance action.

Canadian Aviation Regulations, s. 602.96(3)(b), in that on September 22, 1998, you as pilot in command of Maule M5 aircraft registered C-GPYC, while operating at an aerodrome, failed to conform to or avoid the pattern of traffic formed by other aircraft in operation. Specifically, you took off from runway 27 at Peterborough Airport while two other aircraft were in the circuit for runway 09, which was active at the time. This forced one landing aircraft to clear off the edge of the runway immediately after landing, and another aircraft to overshoot runway 09 to avoid your flight path.

MOTION

Before commencement of this hearing a motion was presented by the case presenting officer for the Minister for the exclusion of all witnesses. This motion was granted and all witnesses accordingly excluded.

THE MINISTER'S EVIDENCE

The first witness was **Inspector Oscar William Binder** of Transport Canada. Mr. Binder is a civil aviation inspector with the enforcement branch and has been a pilot with over 30 years of experience.

Exhibit M-1 was then introduced, a page from the Aerodrome/Facility Directory with details and drawing of the Peterborough airport in Ontario.

The next exhibit was M-2, a letter sent by registered mail to Mr. Juergensen from Inspector Binder informing Mr. Juergensen of an allegation against aircraft C-GPYC and requesting details with respect to the operator of that aircraft on September 22, 1998 at about 19:30 Zulu time.

Exhibit M-3 is a reply from the Respondent indicating that he flew the Maule M5 aircraft identified as C-GPYC out of the Peterborough airport on September 22, 1998 at 21:30 Zulu.

Exhibit M-4 is a handwritten notice from Gerry of the Buttonville Flight Service Centre indicating that the Peterborough weather on September 22, 1998 at 20 Zulu indicated winds from 360 degrees at 7 knots, 15 statute mile visibility, etc. At 2100 Zulu by automatic recording, the winds were 360 degrees at 5 knots, with visibility of 9 statute miles, etc. This indicated visual meteorological conditions with reasonably pleasant weather and a wind from the north between 5 and 7 knots. On cross-examination the Respondent indicated that Exhibit M-2 indicated a time of 19:30 Zulu, during which he was at a business meeting until approximately 17:30 local time.

The next witness was **Inspector Oonagh Jan Elliott**. Inspector Elliott is a Transport Canada enforcement officer of ten years' duration who has been in the aviation industry since 1977 and has flown Beech and Cessna 182 aircraft for many years. She introduced an exhibit labelled M-5, a letter sent by registered mail to Mr. Christel Juergensen indicating a possible violation of paragraphs 602.96(3)(a) and (b) of the *Canadian Aviation Regulations* (CARs). The letter states that the Respondent as pilot-in-command of Maule M5 aircraft, registered C-GPYC failed to observe traffic and failed to avoid or conform to the pattern of traffic formed by other aircraft in operation on a departure from the Peterborough airport. It is alleged that he took off from runway 27 at the Peterborough airport while another aircraft was landing on runway 09 which was active at the time.

The next exhibit, M-6, is a response from the Respondent indicating that following attendance at a business meeting in Peterborough, he returned to the airport at 17:50 and noted that the airport offices were closed. The wind sock indicated a light west wind, and he transmitted on the radio frequency of 123.0 but received no reply to his transmissions. After announcing his intentions, he departed from runway 27, seeing no other traffic, nor hearing any transmissions on his radio. Mr. Juergensen, in his letter, further states that if there was another aircraft on final for runway 09 at the time even without a landing light, he would have seen it, since the visibility was more than ten miles. He states categorically that no traffic was visible and since the prevailing wind favoured runway 27, he chose this for his departure. He had no reason to suspect that runway 09 was in use at the time. The witness states that if the wind is 360, either runway 27 or 09 can be used. The fact that the sun was setting in the west at the time would probably encourage pilots to use runway 09 to avoid taking off into the sun. All circuits are left-hand. On cross-examination the witness stated that any aircraft taking off on runway 27 would be able to see other aircraft in the area. There was no redirect.

The next witness was **Mr. Barrett McKinnon**. Mr. McKinnon is employed at the airport and was in the fuelling area building which contained the pilot lounge. This building is located approximately 300 feet north of the button of runway 27, and at 17:00 local he was working there on the radio.

The next exhibit was labelled M-7. This is a copy of the daily air traffic record which records aircraft flying to the airport from other destinations and aircraft leaving the airport for other destinations. The third line indicates aircraft registration GPYC, a Maule under the arrivals column and again under the departures column. There are no remarks and no times are recorded. The date of the record is September 22, 1998, and the airport indicated is CYPQ (Peterborough). The witness stated that his shift commenced at 14:00, and he worked until the airport was closed.

He stated that aircraft GPYC on September 22, 1998 requested local traffic and advisory, and asked for a flight plan to be opened. He advised the pilot that 09 was the runway in use and that he was unable to open flight plans since his was a UNICOM station. He further stated that the pilot seemed confused by this reply. He heard an aircraft state its intention to taxi to 27 and another aircraft, SGT, indicate final approach for runway 09 telling the aircraft on the ground that he should not be on the runway. No response to this communication was heard. The witness stated that there was another aircraft on base leg for landing, and he advised this aircraft of the potential problem on frequency 123.0. He observed the departing aircraft on runway 27 at the

same time as the aircraft SJT, a red Stinson, was in the opposite direction for landing on runway 09. He was concerned about the close proximity of the two aircraft and felt that they were only 20 to 30 feet apart, at a distance of 2,500 feet down the runway. He testified that the day was clear with good visual flight rules weather.

On cross-examination the witness confirmed that the date of the incident was September 22, 1998. On further cross-examination the Respondent introduced Exhibit D-1, a summary of evidence from Mr. McKinnon indicating "can say" information provided. This indicates that Mr. McKinnon can say that, "on September 28, 1998, he was an employee of Trentair at the Peterborough Airport." The witness stated that this is an error and that the correct date of the incident was September 22, 1998. He further stated the winds favoured 09 and that he obtained the registration of the Maule aircraft by looking directly at it through his binoculars. He was certain it was a Maule as he saw it just across the ramp. He was asked the condition of its paint work but could not say. He reiterated that the pilot of the Maule aircraft requested from him an advisory as well as the opening of a flight plan. He does not remember the content of his reply to the pilot, but he is certain that he did say that the active runway was 09. He also confirmed that he communicated with the Stinson pilot who was landing and with an ultra-light aircraft on a downwind, all of whom were monitoring frequency 123.0. This ended the cross-examination of Mr. McKinnon. On redirect examination the witness confirmed that the date of the incident was September 22. He further confirmed that he felt there was a risk of collision between the departing and landing aircraft.

The next witness was **Mr. David Paul Briggs**, who has a long history and interest in aviation as well as being involved with several aviation companies. He has a commercial pilot licence with an instrument rating. He states that he remembers September 22, 1998 very well as he was on that day attending a rally in Ottawa and was flying a 1947 Stinson C-FSJT and returned to Peterborough between 17:30 and 17:37.

The next Exhibit, M-8, a copy of the log book of aircraft C-FSJT, indicates that on September 22, 1998 the aircraft departed Carp, Ontario at 16:14, landing in Peterborough before 17:37. He stated that he arrived somewhat earlier to Peterborough, and upon arriving to within 15 miles east of the Peterborough airport, obtained an advisory from the Unicom radio operator, Mr. Barrett, whom he knew well, and whose voice he recognized from previous flights. He was given 09 as the active runway and proceeded accordingly. At this point the witness asked to refer to his notes which he said were made immediately following the incident. He stated that he called the Peterborough airport again five miles northeast and was told that there was an ultra-light in circuit, and again that the active runway was 09. He entered the downwind at about 19:30 Zulu using his panel-mounted GPS for navigation. He then heard another aircraft on the same frequency 123.0 asking for a flight plan to be opened and the operator telling him that he was unable to comply with his request. The pilot did not appear to understand the frequency he was given, 126.7, on which he could file his flight plan. The pilot asked for the number to be repeated several times. At this point the ultra-light aircraft IFPH entered the downwind and reported this by radio. The pilot observed the wind sock on the airport and saw the other pilot taxi past the hold short lines of runway 27. The witness broadcast to this aircraft advising him to get off the runway. He received no response and proceeded with his landing attempt. He felt committed to the landing and did so as far to the right of the runway as he could in the three-point manner with

maximum braking. He saw the other aircraft taking off and felt the separation was somewhere between 25 and 40 feet. The wing tips overlapped on the left side and he was concerned that the departing aircraft might cause a problem for the ultra-light pilot since the sun was in his eyes, and he probably could not see very much in front of him. He observed the ultra-light pilot overshoot the runway and again felt that there was a second near collision. The witness stated that he works studying distances and competitions. He recognized the eastern European accent of the Maule pilot since he had spoken to him earlier that same day at the Peterborough airport. He identified the voice as that of Mr. Juergensen.

On cross-examination Mr. Juergensen requested the date and time, and the reply was September 22, 1998 at 17:37, the weather conditions being pleasant. Mr. Juergensen noted that the westbound flight between Carp and Peterborough was logged at 1.6 hours whereas the eastbound flight was logged at 1.2 hours, suggesting a westerly wind. The witness replied that the difference in time was due to the fact that on the westbound flight he had to divert around low fog and cloud, thus, requiring a longer period of time. The witness replied that he was certain that 09 was in use and that at 17:37 his engines were shut off, thus, he must have landed at approximately 17:30. The witness confirmed that he had spoken to the Respondent in the morning and identified the Maule rocket as tan coloured, and in good condition.

The witness remembers the tan colour clearly, as well as the accent of the pilot. He stated that he obtained the registration of the Maule aircraft from the radio-transmissions that he heard from the pilot, and did not read it directly off the aircraft itself. There was no redirect.

The next witness was **Mr. Keith Alexander Connor**. He is a pilot of over 27 years who now flies and instructs on an ultra-light at the Peterborough airport. He has logged over 2,000 hours of flying time and operates a flight school for ultra-light aircraft. He testified that on September 22, 1998 at 5:30 p.m. he was with a student teaching circuits at the Peterborough airport. At this time the active runway was 09 with left-hand circuits. The weather was clear with sun obscuring the west and obstructing visibility from the taxiway to runway 09. He was following another aircraft in circuit turning on final and heard another aircraft transmitting that the aircraft on final should not be there. He then observed another aircraft taking off from runway 27 against another aircraft landing in an opposite direction on runway 09. He turned his ultra-light to the right and over shot the airport. He heard a radio transmission requesting the registration of the aircraft on runway 27 and observed that this aircraft was a high wing aircraft. He heard the Unicom operator sounding upset and concerned. He stated that he started with his student some time after 16:00 hours when the student had finished work to commence his lesson. The sun was not yet setting, and he estimated the time to be between 5:00 and 6:00 p.m.

On cross-examination the witness was unable to state the date with certainty. He was certain that the aircraft on 27 was a high wing Cetabria or old Piper type aircraft. The Maule is similar to a Cetabria and is also high winged. He was unable to determine the colour but stated he over shot the runway to avoid a collision, and was worried about the possibility of collision between the landing aircraft on runway 09 and the departing aircraft on runway 27. He felt that the caution transmission that he received telling him that he should not be on final came from the aircraft departing on 27. There was no redirect. This concluded the Minister's evidence.

The Respondent, **Mr. C. Juergensen**, took the stand and was duly sworn. He stated that he has been flying since 1940 and currently holds a commercial licence with 1,400 hours of experience. He bought the Maule aircraft in 1976 and was flying to Peterborough for a board meeting with a passenger, Mrs. L. Vince from Fergus, Ontario, departing at 7:45 a.m. and landing in Peterborough at 8:40 a.m. He attended a meeting until 5:00 and then left for the airport, arriving at 5:45 p.m. He stated that on the departure he was unable to file a flight plan since all the doors were locked but after starting his engine he transmitted on the frequency 123.0 and received no reply to his request for take-off information. He never saw nor heard any other aircraft in the area or on the ground and noted that the wind sock showed a light wind from the northwest. He taxied to 27 and transmitted his take-off intentions and again received no reply. The sun was low at about 6:00 to 6:10 p.m. He was not blinded, but the visibility was obscured. He again stated that he saw and heard no one, that he felt the airport was deserted. He took off without a problem, and did not see any conflicting traffic. He has kept a diary for over 40 years, entering data daily, and from it he read that he got up at 5:30 a.m., flew 55 minutes eastbound to Peterborough at 8:40 a.m., and departed Peterborough at 5:45 p.m. for a one-hour and six-minute westbound flight to Fergus. He stated that his aircraft is ivory in colour recently painted. He stated that the events he heard described on the 22nd more probably occurred on the 28th of September.

On cross-examination he stated that he was at the Peterborough airport on September 22, 1998, that he uses a Clark headset, and that he contacted Unicom Radio on 123.0 but received no reply. He denies asking to have his flight plan opened at this time. He states that he flew his aircraft on September 22, 1998 but not as early as 17:30 p.m. He agreed that he was the pilot of PYC on this date.

The next witness was **Mrs. Linda Maureen Vince**. This witness states that on September 22 she flew as a passenger on GPYC and that the weather conditions in the morning were dark and rainy but became clearer as the day progressed. Her trip to Peterborough was clear, and during this flight she spoke with the pilot easily through a head set she wore which contained an intercom. She was able to hear radio transmissions as well though she did not always know what they meant. She indicated that the landing in Peterborough took place at 8:45 a.m. after a one-hour flight, and she remembers that they tied down the aircraft and that there were no other people in the area. She stated at 5:15 p.m. she left a meeting with the pilot, walked to the parking lot, and then drove to the airport with an estimated arrival at 5:45 p.m. though she could not remember exactly what time it was. She accompanied the pilot into the airport building which was totally empty and provided the pilot with the change that he needed to use to make a phone call. She testified that no one was in the area and no aircraft were heard or seen anywhere near the airport. She described the area as being deserted, and she further testified that she heard no other aircraft transmissions on the radio. She remembers the pilot using the radio and not getting a reply to his request. She testified that she was concerned that there was no response to his request. She described the take-off as a "painter's delight" with special lighting of trees and landscape, and she saw no notable events other than these.

On cross-examination this witness stated that she has no flying experience and that on September 22 while flying in the Respondent's aircraft, she heard the pilot calling over and over on the radio but receiving no response. She stated she was not looking for other aircraft but did

not notice any and would not have known where to look in any event. There was no redirect and this concluded the Respondent's evidence.

CLOSING ARGUMENT

The Respondent's contravention of paragraphs 602.96(3)(a) and (b) of the CARs was confirmed through testimony and exhibits. The Respondent was the pilot of aircraft GPYC who failed to observe and avoid, according to the testimony of Mr. Briggs. He failed to conform to the pattern of traffic, departing straight out on an inappropriate runway without a left turn. This is a strict liability offence not requiring intent.

The Respondent stated that there was no aircraft incident at 5:45 p.m. on September 22, 1998 and no response to radio calls since the radio operator was not present. He departed an uncontrolled airport, observing all the rules of attempting to contact Unicom and radioing his position and intentions to depart runway 27. The visibility was good, and he could not possibly have failed to see another aircraft if it were in the area. He has been accident-free for 27 years and at the time of the alleged event he was still in his car driving to the airport in the company of his passenger. He introduced Exhibit D-2, a photograph of his aircraft taken in 1998, and stated that its colour was closer to ivory than to tan. He stated that there was no registration for the ultra-light or for the Stinson aircraft in the operator's log book for September 22, and that the airport offices were all closed when he proceeded with his departure plans from the Peterborough airport. He heard no radio conversation despite the fact that all other witnesses testified that there were considerable radio transmissions at the time that they were operating in the vicinity of the aircraft on September 22.

SANCTION

The Minister's representative informed the Tribunal that there have been increasing numbers of runway incursions which are considered quite hazardous, particularly in airports where aircraft fly without radios. The published common frequency or mandatory frequency should be used in all uncontrolled situations and in the interest of aviation safety, strict adherence to these regulations which were breached in this instance is necessary. This is a first offence and thus the nominal penalty should apply.

CONCLUSION

On September 22 at approximately 5:30 p.m. a Maule aircraft registered to the Respondent departed Peterborough airport on runway 27 into the face of a landing aircraft using runway 09 and observed by a third aircraft in circuit for 09. All observers involved are aviators with considerable experience and all provided similar testimony with the exception of the testimony of the Respondent and his novice passenger. The Respondent took off without appropriate information from the Unicom operator and without hearing communications from other aircraft, directly into the setting sun with obscured vision and without seeing a landing aircraft directly in front of him.

DETERMINATION

On balance of probability I am convinced by the evidence presented that the Respondent flew the aircraft in the manner described by witnesses on September 22, 1998 and thus confirm the Minister's assessment of a monetary penalty of \$500.00.

S. Birenbaum, M.D., C.C.F.P.
Member
Civil Aviation Tribunal