

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Appellant

- and -

Adrian Martin Brookes, Respondent

LEGISLATION:

Air Regulations, C.R.C. 1978, c. 2, s. 534(7)

Low flying, Authorization to take off

Appeal decision

Alfred R. Spence, G. Richard, James W. Snow

Decision: November 1, 1989

Heard: Ottawa, Ontario, September 25, 1989

The appeal is dismissed and the Review Hearing determination confirmed.

Appeal Hearing on the above application heard by the Civil Aviation Tribunal, at Canada Building, 344 Slater Street, Room 405, in the city of Ottawa, Ontario, on the 25th day of September 1989 at 10:00 hours.

On April 17, 1989, Adrian M. Brookes filed a Notice of Appeal of the review decision rendered by Tribunal member, Zita Brunet, dated March 23, 1989, in which she found that the Appellant had contravened *Air Regulation 534(7)*, but removed the monetary penalty imposed under the Notice issued by the Minister of Transport dated March 4, 1988.

The grounds for the appeal were stated as follows in the Notice of Appeal:

1. the decision was made against the weight of the evidence, and
2. the decision includes an interpretation which is in error.

Specifically,

1. that the area of the launch has been shown by the evidence submitted and testimony heard to not be within a built-up area, and
2. that the area of the launch is not surrounded by many built-up areas.

A hearing was held in accordance with the Notice issued by the Tribunal on the 25th day of September 1989. The Appellant represented himself and the Respondent was represented by Mr. Fred Jones.

At the hearing, the Appellant requested that he be allowed to introduce new evidence in the form of documents and of a witness. The documents consisted of a copy of certain provisions of the *Resources and Technical Surveys Act* and of the Standards and Specifications, 1:50 000 Polychrome map, National Topographic System published by Topographical Mapping Division, Canada Centre for Mapping. The Appellant also wished to submit a copy of definitions appearing on pages 306 and 307 of the Oxford English Dictionary, 2nd Edition, Volume XVII, Clarendon Press, Oxford, 1989. The proposed witness was an employee of the Department of Energy, Mines and Resources Canada. The main purpose of his testimony was to be the introduction and explanation of the documentary evidence.

The Tribunal granted the Appellant's request in part, allowing the introduction of the documentary evidence but refusing to hear the testimony of the proposed witness. Acts of Parliament can be invoked at any time during the proceedings and do not require permission to this end. The Standards and Specifications submitted are guidelines issued by the Department for the assistance of cartographers. They have no legal force and were accepted by the Tribunal for purposes of information only as were the dictionary definitions. It was decided that the testimony of the witness was not required to introduce the documentary evidence and should not be allowed inasmuch as evidence that was available at the time of the Review Hearing would be submitted.

Mr. Brookes argued that his appeal should be granted on the basis that the area of launch was neither a built-up area nor located within a built-up area.

No definition of a built-up area is to be found in the *Aeronautics Act* or the *Air Regulations*. Mr. Brookes proposed that the definition provided by the Standards and Specifications be relied on. This definition reads as follows:

A built-up area is a populated zone where the buildings are so close together that for cartographic clarity they are represented by a built-up area outline.

The Compilation Instructions which follow the definition provide, inter alia:

Exclusions from built-up areas include parks, cemeteries, area outline features, power transmission lines and highway easements over 2 mm [on the map] in width and areas adjacent

to hospitals, schools or other institutions which have grounds equivalent to one half a normal city block.

If this definition were adopted, it would follow that the area of launch, acknowledged by Mr. Brookes to be Riverside Park, could not be considered as a built-up area.

The Standards and Specifications have no legislative authority. They are meant to serve as guidance for cartographers in the execution of their work. The exclusions are of a nature such as to indicate that while the guidelines may be useful in drawing up maps, they are of no assistance for purposes of air navigation.

The Respondent did not deny that the area of launch was a park but did submit that "a park or grassy area surrounded by the built-up area of any city or town would also be part of that built-up area". The Tribunal member in her review decision concluded that "open parkland in itself does not qualify as a built-up area but does qualify as a surface within a built-up area". We find no reason to disturb this finding as it applies to the present circumstances.

The real issue is not primarily whether the park is or is not a built-up area since *Air Regulation 534(7)* refers to "taking off from a surface within a built-up area", not "taking off from a built-up area". The Tribunal member in her decision noted that there is no definition of "surface" in the *Aeronautics Act* or the regulations. The exceptions the prohibition provided in *Air Regulation 534(7)* refer at paragraph (a) to the surface as being an airport or military aerodrome. The fact that the wording mentions an airport or military aerodrome rather than a runway or other limited section of the airport or aerodrome indicates that the "surface" in the general rule is intended to cover an area larger than that specifically required for takeoff. In this instance, we consider the "surface within a built-up area" to encompass the general area of launch, i.e., the park rather than the limited area of launch within the park.

A review of the record and, in particular, the Appellant's description of the area of launch (See transcript p. 77, lines 11 to 14) leads us to concur with the Tribunal member's observation in her review determination that "the park is at one point or another surrounded by streets and presumably contain dwellings and other buildings. This area is not on the edge of the city but well inside the city." The Appellant argued that the park was not "within" the built-up area of the city because "by examining the area of the alleged launch on Exhibit M-7, it is possible to exit the boundary of the city of Ottawa from that launch area without passing through areas of red screen, which would show that the launch area is not enclosed or encased by a built-up area". In our view, this position is not based on a reasonable interpretation of the word "within", as it implies being locked in, hermetically surrounded on all sides. Neither the Act nor the regulations provide a definition of "within". The Appellant quoted the Collins English Dictionary as defining "within" to mean "inside", "enclosed", or "encased". The Respondent cited the Concise Oxford Dictionary as setting out "within" to mean "to or on or in the inside of, enclosed by".

The new *Webster Encyclopedia Dictionary of the English Language* (LCCC No. 75 - 128479) defines "within" as:

In the inner or interior part or parts of; inside of; opposed to "without"; in the limits, range, reach or compass of not beyond; inside or comprehended by the scope, limits, reach of influence of, not exceeding, not overstepping, etc., adv. In the interior or center; inwardly; internally; in the mind, heart or soul; in the house or dwelling; indoors; at home.

In view of the above, we conclude that the park was within the built-up area of the city. In arriving at this decision, the panel is mindful of the observations made by the Tribunal in other matters dealing with balloonists, but endorses the position put forward by his Honour Judge Bell in *Robert Freeman v. H.M. The Queen* as quoted by the Respondent.

"It is not for me to draw a distinction between the susceptibility to the *Air Regulations* of different types of craft subsumed under the term aircraft, nor is it for me to create policy which the accused complains is not forthcoming from Transport Canada, much as I might be impressed with the difficulties balloonists may have in complying with the *Air Regulations* and much as I might be impressed as I was with the obvious sincerity and prudence of the accused ..."

For these reasons, we reject the appeal and confirm the Review Hearing determination.