

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Donald Doyle and Richard Pizzardi, Respondent

LEGISLATION:

C.R.C., c. 2, art. 534(2)(a)(b), 827
Section 7.7 of the Aeronautics Act
Sections 534(2)(a) of the Air Regulations
Sections 534(2)(b) of the Air Regulations
Sections 827 of the Air Regulations

Open air assembly, Low flying, Log-book entries, Built-up area

**Review Determination
J.L. MacKay**

Decision: August 20, 1990

Heard: Montréal, Quebec, June 21, 1990

Donald Doyle and Richard Pizzardi contravened sections 534(2)(a), 534(2)(b) and 827 of the Air Regulations on or about July 15, 1988, and the penalty of \$600 is confirmed. A cheque is to be made payable to the Receiver General for Canada and mailed to the Civil Aviation Tribunal, 344 Slater Street, Room 405, Ottawa, Ontario, K1A 0N5, no later than September 28, 1990.

Review Hearing on the above application heard by the Civil Aviation Tribunal, at Complexe Guy Favreau, Salle des Pins, 200 René Lévesque Blvd., in the city of Montréal, Quebec, on June 21, 1990, at 10:00 hours.

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 provisions of *Air Regulations*, sections:

534(2)(b) On July 15, 1988, around 15:00 hours local time, Cessna 172, bearing registration C-GBPR, overflowed a house on chemin Ste-Marie near St-Polycarpe, P.Q. at an altitude lower than 500 feet, thus contravening *Air Regulations* 534(2)(b).

534(2)(a) On July 15, 1988, around 16:10 hours local time, aircraft Cessna 172, bearing registration C-GBPR, overflowed the village of Pointe des Cascades, Vaudreuil Co. lower than 1,000 feet, thus contravening *Air Regulations* 534(2)(a).

827 On July 15, 1988, around 16:10 hours local time, near Pointe des Cascades, P.Q., Cessna 172, bearing registration C-GBPR, was flown and an accurate book entry was not made, thus contravening *Air Regulations* 827.

Mr. Doyle and Mr. Pizzardi, as the registered owners of Cessna 172, C-GBPR, (and as provided for under Chapter 33, section 8.4(1), Enforcement, "Aircraft owners may be found liable"), were assessed a penalty of \$600 which was not paid on the required date of August 15, 1989. Accordingly, pursuant to the designated provisions of the regulations and procedures established in sections 7.7 to 8.2 of the *Aeronautics Act*, the Review Hearing was held on June 21, 1990, at 10:00 hours.

There were no pre-hearing agreements. Therefore, the only issue to be determined is whether or not the subject aircraft was flying at an altitude which contravenes section 534(2)(a), 534(2)(b) and whether there was a contravention of section 827 of the *Air Regulations*.

The relevant *Air Regulations* read, in part, as follows:

534(2) Except as provided in subsections (4), (5), and (6) or except in accordance with an authorization issued by the Minister, unless he is taking off, landing or attempting to land, no person shall fly an aircraft

(a) over the built-up area of any city, town or other settlement or over any open-air assembly of persons except at an altitude that will permit, in the event of an emergency, the landing of the aircraft without creating a hazard to persons or property on the surface of the earth, and such altitude shall not, in any case, be less than 1,000 feet above the highest obstacle within a radius of 2,000 feet from the aircraft; or

(b) elsewhere than over the built-up area of any city, town or other settlement or over any open-air assembly of persons at an altitude less than 500 feet above the highest obstacle within a radius of 500 feet from the aircraft.

Air Regulation 827 reads:

Every entry in a log maintained pursuant to section 826 shall be made accurately and in ink by a competent person and signed by that person as soon as possible after the events they record.

The exceptions are found in paragraphs 534(4)(5)(6) and (7). The Respondents failed to claim any of the exceptions.

Transport provided, as their first witness, RCMP officer Constable Kyle. He provided a written statement taken from Mr. Eric Schofield who verified his statement and was very clear on what was seen. He is a very creditable witness and is familiar with aircraft operations as he is retired from the Air Force. Transport then produced the certificate of registration. The registration shows Mr. Richard Pizzardi and Mr. Donald Doyle as the registered owners of Cessna 172, C-GBPR. Transport entered as evidence Chapter 33, section 8.4(1): "Owner of aircraft may be found liable".

8.4(1) reads:

The registered owner of an aircraft may be proceeded against in respect of and found to have committed an offence under this Part in relation to the aircraft for which another person is subject to be proceeded against unless, at the time of the offence, the aircraft was in the possession of a person other than the owner without the owner's consent and, where found to have committed the offence, the owner is liable to the penalty provided as punishment therefore.

Transport then produced a statement as Exhibit 14 from a Mr. M. Razurel on low flying over the village of Pointe des Cascades around 16:10 local time. Transport also produced a statement signed by Mr. Langlois and Mr. Diandre, also signed by Mr. F. Razurel as Exhibit 5. Transport then produced Mr. F. Razurel as a witness to verify his statement. Mr. Doyle, at this time, asked for a postponement as his witness failed to appear. The request was granted.

Reconvened on July 31, 1990

APPEARANCES

Minister of Transport, Mr. Richard Tremblay

Doyle and Pizzardi, no-show

Hearing was reconvened at 11:00 hours after giving a one-hour grace period, and also calling the Civil Aviation Tribunal to confirm no calls from Respondents. Transport produced, as evidence, Exhibit 6, journey log entries for July 15, 1988. Transport then gave a summation on their position and witness. I must give the balance of probabilities to Transport in all regards, as we had a no-show and no witness from Mr. Doyle and Mr. Pizzardi. Therefore, the decision of the Minister is hereby confirmed. The fine of \$600 is to be made payable to the Receiver General for Canada and mailed to the Civil Aviation Tribunal office no later than September 28, 1990.