

**TRANSPORTATION APPEAL TRIBUNAL OF CANADA**

BETWEEN:

**Nicholas Tyler Trinacty**, Appellant

- and -

**Minister of Transport**, Respondent

**LEGISLATION:**

*Aeronautics Act*, R.S.C. 1985, c. A-2, ss. 3(1), 6.71(1)(b)

*Canadian Aviation Regulations*, SOR/96-433, s. 401.06(b)(iv)

**Commercial Pilot Licence**

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**Appeal decision**

**Faye H. Smith, Frank Morgan, Hebb C. Russell**

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**Decision: February 23, 2006**

*We refer the matter back to the Minister for reconsideration of its Notice of Refusal to issue dated October 27, 2004.*

**The appeal hearing** in the above matters was heard on October 19, 2005 at the premises of Victory Verbatim, Ernst & Young Tower, 222 Bay Street, in Toronto.

**BACKGROUND**

The Minister of Transport decided, pursuant to paragraph 6.71(b) of the *Aeronautics Act*, to refuse to issue a Commercial Pilot Licence - Aeroplane to the appellant Nicholas Tyler Trinacty on two occasions, evidenced by Notices of Refusal to Issue dated October 27, 2004 and January 5, 2005. The Minister's reasons for refusal stated that Mr. Trinacty did not meet the pilot-in-command and instrument experience requirements as required by subparagraph 401.06(b)(iv) of the *Canadian Aviation Regulations* (hereinafter the CARs) as Mr. Trinacty's personal logbook contained errors resulting in the allegation that Mr. Trinacty did not meet the required number of hours of flight.

Specifically, the Notice of October 27, 2004 states as follows:

According to your personal logbook, you conducted a solo flight in aircraft C-GUJR for the issuance of a seaplane rating - aeroplane on August 11, 2003. The application for endorsement of a rating reflects that temporary privileges were awarded to you on that date.

Subsequent flights in aircraft C-GUJR while on floats and accompanied by instructor Paul Tymstra did not meet the regulatory requirements for the logging of pilot-in-command. Pilot-in-command is defined as "the pilot having the responsibility and authority for the operation and safety of the aircraft during flight time" (Section 3.(1) of the Aeronautics Act refers). Therefore, the flights of August 11, 2003 (2 flights totalling 2.7 hrs), August 18, 2003 (1 flight of 1.8 hrs), August 19, 2003 (1 flight of 4.1 hrs), August 20, 2003 (1 flight of 2.6 hrs), August 23, 2003 (1 flight of 2.3 hrs), August 24, 2003 (3 flights totalling 5.3 hrs) and August 25, 2003 (3 flights totalling 7.8 hrs) you were not lawfully pilot-in-command of aircraft C-GUJR. You are required to correct your personal logbook accordingly. Once the experience requirements of Subsection 421.30(4) of the CARs have been met, you may re-submit your personal logbook and application for processing.

Consequently, the Minister asserted that a number of the flights entered as meeting the requirements for the licence failed to do so as Mr. Trinacty was not the pilot-in-command of aircraft C-GUJR during those 12 flights and hence he was not "the pilot having the responsibility and authority for the operation and safety of the aircraft during flight time" as required by subsection 3.(1) of the *Aeronautics Act*.

The Notice dated January 5, 2005 states:

During the period of August 13, 2003 - August 18, 2003, you logged a number of flights in aircraft C-FSMS. According to your revised personal logbook, these flights have been amended to indicate pilot-in-command flight time.

Pilot-in-command is defined as "the pilot having the responsibility and authority for the operation and safety of the aircraft during flight time." (Section 3.(1) of the Aeronautics Act refers.) According to records, you were not the pilot-in-command and do not meet the regulatory requirements for the logging of pilot-in-command. Therefore, the flights of August 13, 2003 (1 flight of .3 hrs), August 14, 2003 (3 flights totalling 2.8 hrs), August 16, 2003 (4 flights totalling 2.8 hrs), August 17, 2003 (2 flights totalling 2.8 hrs), and August 18, 2003 (2 flights totalling 1.1 hrs) you were not lawfully pilot-in-command of aircraft C-FSMS. You are required to correct your personal logbook accordingly. Once the experience requirements of Subsection 421.30(4) of the CARs have been met, you may re-submit your personal logbook and application for processing.

Additionally, the Minister asserted that the 12 flights cited as meeting the requirements for the licence failed to do so as Mr. Trinacty was not the pilot in command of aircraft C-FSMS during those 12 flights and hence was not the pilot-in-command as required by the legislation mentioned

above. On this basis, the Minister concluded that Mr. Trinacty's personal logbook contained errors and thus Mr. Trinacty did not meet the experience requirements of subsection 421.30(4) of the CARs and consequently was refused issuance on both commercial pilot licence applications.

The Minister states at page two of the Notice of January 5, 2005 as follows:

Furthermore, your Commercial pilot flight test was conducted on December 7, 2003. Subsection 421.30 (5) of the *Canadian Aviation Regulations* states in part "Within 12 months preceding the date of application for the licence, an applicant shall successfully complete a flight test to the standard...". You will need to successfully complete a Commercial Pilot flight test to meet the skill requirements for the issue of the Commercial Pilot Licence.

The matter was heard before Tribunal Member at review on March 16, 2005. Following the review hearing the Tribunal Member upheld the Minister's refusal to issue a commercial pilot licence to Mr. Trinacty, in accordance with paragraph 6.71(1)(b) of the *Aeronautics Act*, on the basis that the Minister had proved that Mr. Trinacty had failed to meet the pilot-in-command experience requirements as required by subparagraph 401.06(b)(iv) of the CARs.

## **GROUND FOR APPEAL**

Mr. William F. Clark, counsel for the appellant, requested an appeal of the above-referenced determination on the following grounds:

1. That the Tribunal Member erred as follows:
  - a. by allowing unproven evidence to be put into the Review Record some of which evidence was relied upon by the Tribunal member as the basis for his decision;
  - b. by relying on records altered by the Appellant and others subsequent to the alleged contravention having occurred, which records were only altered due to the request of Transport Canada, which alterations were relied upon by the Tribunal member as an admission by the Appellant of guilt;
  - c. by relying upon extensive evidence created either at the specific request of Transport Canada, or created by the parties in the assumption that altered evidence would satisfy Transport Canada and the Tribunal member applying that altered evidence as prove of guilt and proof of lack of prior determination of the Pilot-in-Command;
  - d. by relying upon internally generated Transport Canada policy documents (Aeronautical Information Publication) which are advisory and not a matter of law and applied that advisory as law by determining that the Pilot-in-Command of a flight must be determined prior to take-off;

- e. by making a determination of Pilot-in-Command on the flights in question solely on the basis of the altered evidence rather than the verbal evidence of the participants in the flights in question;
- f. by equating the term "Solo" with the term " Pilot-in-Command" in the Canadian Aviation Regulations.

## **APPELLANT'S SUBMISSIONS**

Counsel for Mr. Trinacty asserted that Transport Canada refused Mr. Trinacty a licence based on 36.3 hours that he flew in aircraft C-GUJR and C-FSMS which was the total time disallowed on his applications. The second denial was based on the same contention that the former instructor was in the cockpit at the time of his logging this 36.3 hours. The Minister's representative has asserted that pilot-in-command time cannot be logged when the instructor is in the cockpit. However, the appellant's counsel submits that Mr. Trinacty can log the hours as pilot-in-command time, but there is a superior duty to determine who is the pilot-in-command. Pursuant to subsection 3(1) of the *Aeronautics Act*, the pilot-in-command is the pilot having responsibility and authority for the operation and safety of the aircraft during flight time, and there is nothing in the definition regarding the predetermination of who is the pilot-in-command. The AIP says there is, but that document is advisory only. Mr. Trinacty's counsel states that based on the evidence of who flew the aircraft and as was subsequently substantiated, this is a good practice, but it is not the law. He states that there is no denial that Mr. Trinacty flew 36.3 hours, and there is no evidence that Mr. Trinacty did not have operational authority of the aircraft.

The decision of the Review Member states there is confusion with the result that no one was pilot-in-command. The record shows that the other person on board says that it was not him. If we go to the record, the first two decisions are based on Transport Canada policy that no one can log pilot-in-command time: [\[1\]](#)

It is clear the applicant was at the controls of C-GUJR and C-FSMS during the flights in question in this matter, but was not identified as P.I.C., nor did he understand who was P.I.C. It is clear the applicant is a licenced pilot, accumulating flight time towards meeting P.I.C. requirements for a commercial pilot licence. It is also clear that the applicant had persons on board accompanying him during the flights. While it is acceptable for a licenced pilot to carry passengers and claim P.I.C. time leading to a commercial pilot licence, in this case the passengers were flight instructors with whom the pilot had just completed type endorsement training on aircraft being flown.

Relationships between instructors and students, plus dependencies by students upon their instructors, do not change quickly. An actively involved instructor cannot become a passive passenger in a matter of hours. In this matter, it is apparent neither party knew who was P.I.C., and neither party can state definitively that he was P.I.C. When an instructor becomes a passenger in such circumstances, it is of utmost importance that a key issue be very clearly resolved. There must not be any misunderstanding or confusion as to what their respective

roles are when the instructor becomes a passenger, i.e. who is pilot-in-command. In my opinion, this was not understood nor agreed to by either party.

In the matter before me, both in evidence and in testimony, I find that Mr. Trinacty's role was not made clear, giving rise to confusion and contradiction with information logged by Mr. Trinacty in his personal logbook, and in documents held by Huron Flight Centre. Transport Canada had no choice in the matter. The key question of "who was P.I.C." was not clearly and consistently articulated in all documents they examined when they concluded Mr. Trinacty was not pilot-in-command in the aircraft in question.

I further believe this matter developed as a consequence of the Huron Flight Centre policy at the time, where instructors were required to accompany flights of float equipped aircraft. This policy was confirmed in evidence and testimony by the parties.

Mr. Clark for the appellant is stating that the Tribunal Member is setting a different standard. The date of August 11, 2003 is pivotal as that is the date that the student started as pilot-in-command. Mr. Trinacty has a private licence, he is concluding his float endorsement and they do a ground briefing and he goes out at 17:00 hours. From 11:30 to 17:00, the paperwork indicated his flight as a float endorsed pilot. At 17:00 two qualified pilots go out and one is his former instructor. The only reason for the flight was for him to start as pilot-in-command. Otherwise there would be no reason for that flight or any other of the 36.3 hours.

Mr. Clark states that to say now that they did not know he was pilot-in-command is absurd. The purpose of the flight was that Mr. Trinacty was building time. That is to say that the acknowledgment that he was flying with the school was good for including the time as building time as pilot-in-command. There was no other reason for his being on that flight. The decision says that there was confusion. The Tribunal Member relies on the second pilot log, i.e. the revised pilot log. The Minister and the Tribunal Member relied upon the re-created evidence which the person in authority on behalf of the Minister had asked Mr. Trinacty to change. The student relied on the guidance of Transport Canada and then, they turned on him and used their direction to him as an admission of guilt on his part.

These are the records: Tab 2 being the sign-out sheets starting with August 11, 2003; Tab 9 is the pilot training record, at August 11, 2003; and Tab 11, student pilot logbook re date of August 11, 2003. The decision to not give the licence was made on policy. Mr. Tymstra was logging pilot-in-command time (Tab 6) and he gave evidence under oath at the review hearing that he was double-dipping and he wrote a letter to Transport Canada as set out in Tab 5 as follows:

After the issue of the student's Seaplane privileges and during time building towards the students Commercial Pilot-In-Command time requirements, I would regularly ride along as a passenger during the flight. Prior to those flights and as per AIP LRA 3.7.1 the Pilot-In-Command was established prior to the flight

commencing and at no time was any dual flight instruction taking place. Any flight that dual flight instruction took place was logged as "Dual".

Furthermore, on occasion, I failed to complete and forward the appropriate paperwork required to facilitate licencing for the Seaplane rating. I would like to apologize for any shortcomings on my behalf and encourage Transport Canada not to hold the individual student's licencing back but to process them without prejudice.

Mr. Trinacty signed as pilot-in-command in three of the records cited above. His evidence was that he did not look at sign-out sheets but he just signed out. After receiving his seaplane endorsement he was pilot-in-command. At page 11 of the Member's decision, midway down the page, the Member states:

...neither party had a clear understanding of whose role was what during these flights. My findings of misunderstanding, inconsistency, and contradiction are further validated in that the applicant did not dispute contents of any referenced documents presented by the Minister of Transport.

The appellant's counsel states that Mr. Trinacty changed his log to comply with Transport Canada's request. Also at page 11, at the fourth bullet, Mr. Trinacty says that he thought he was pilot-in-command. The Tribunal Member was wrong. Look to the decision at page 9 and to the transcript at page 3 of Mr. Trinacty's evidence at line 18 and following where he answered: "The procedures for that at Huron flight Centre were to sign out sign out sheets and enter into the aircraft logs as me as P.I.C. and whoever I was carrying as passenger, as passenger." Further continuing on, the Minister's representative asked: "Uhm, it shows here very clearly that you did that on all your P.I.C. flights, so we don't have to go back into those logs again. Uhm, did you realize that Paul was logging as P.I.C. too?" Mr. Trinacty answered, "No, I did not." The Minister specifically asked, "Prior to takeoff, did you and Paul have conversations who was going to be P.I.C.?" Mr. Trinacty answered "Yes, we did." Next question, "I assume you were?" Answer by Mr. Trinacty: "Yes. I was P.I.C." The following pages 3, 6, 8, 10 of the transcript confirm additional conversations regarding Mr. Trinacty's assertion that he was pilot-in-command.

Mr. Clark for Mr. Trinacty states that Mr. Tymstra was double-dipping when he logged those flights on C-GUJR (Tab 6). He refers to page 3 and following of the transcript of Mr. Tymstra's evidence where Mr. Tymstra specifically stated that Mr. Trinacty was pilot-in-command of those flights and that he himself was the passenger and he further stated at page 3 that he did not act as an instructor and did not give dual exercise. He made the same admission at line 48 on page 7 of his evidence. He further referenced line 82 at page 12 of the transcript where Mr. Tymstra was asked, "You realize that once you signed them off as a float rated pilot that they were going to log P.I.C.?", to which Mr. Tymstra answered "Yes."

Finally, Mr. Clark addresses the issue of solo versus pilot-in-command. He refers to Tab 4 being the letter from Transport Canada referring to solo time and argues that the issue is not about solo time and the appellant had completed his 30 hours of solo before. As well, in his decision, at

page 6, the Tribunal Member also errs in equating solo time to pilot-in-command time. Appellant's counsel submits that it is not supervised solo but supervised pilot-in-command time and that the Booth decision referred to in the summation of the Minister's representative was irrelevant to the case at hand. In the matter before us there is no law that says the student cannot be pilot-in-command when an instructor is on board.

## **RESPONDENT'S SUBMISSIONS**

Ms. Caminsky for the Minister submits that the findings of the Tribunal Member are reasonable. The key is that Mr. Trinacty did not have pilot-in-command requirements. The total hours recorded in Mr. Trinacty's logbook for the flights referred to in the first notice were 26.5 hours. The summary is on the record as Exhibit M-1(B). There is the evidence of Mr. Chalmers. There is the conversation of December 9, 2003. Notes and verbal testimony from Mr. Chalmers indicated that Mr. Tymstra stated that students "never go solo" and that it was "almost impossible not to do some instruction". Ms. Caminsky further stated that in Mr. Tymstra's personal logbook (prior to his communication with Transport Canada on April 13, 2004) there was a record of the flights on August 18, 19, 20, 23, 24, and 25, 2003. Prior to his communication with Transport Canada, the record shows "self" as pilot-in-command. The record of Mr. Trinacty said he was pilot-in-command and he later said "I made a mistake" and the de facto pilot-in-command was the instructor for the insurance policy. See Exhibit D-2 in the record which states "... this clause does not restrict students enrolled in the Huron Flight Centre program to dual only on C-GUJR. They may log PIC time if they are operating solo under the direct supervision of an instructor".

Ms. Caminsky further asserts that Mr. Tymstra was being paid as instructor when he flew with Mr. Trinacty. He flew with Mr. Trinacty for insurance purposes. He qualified the remarks later by saying that he said that he would take over later if a hazard occurred and qualified these remarks by stating that he would take action only in a life-threatening situation and only in a grave emergency. Mr. Trinacty was asked why the instructor was there, responding "so that he wouldn't do anything stupid."

The Minister's representative stated that the second Notice dated January 5, 2005 stated in part that the decision not to issue the licence was because Mr. Trinacty did not meet the experience requirements as required by the CARs. The Notice stated that it had been determined that his personal logbook contained a number of errors. The Notice also stated that in 12 instances (12 flights over 5 days) Mr. Trinacty was not lawfully the PIC of aircraft C-FSMS. The total hours recorded in Mr. Trinacty's logbook for the flights referred to in the above paragraph was 9.8 hours.

Mr. Trinacty had revised his log to show "self" as PIC of aircraft C-FSMS during flights on August 13, 14, 16, 17 and 18, 2003. The two names, Robertson and Cowden, are shown as co-pilots during these flights.

The aircraft journey log for C-FSMS showed "Robertson" as Captain for specific flights of C-FSMS on August 13, 14, 17 and 18 and a corresponding statement which reads "Training for Nick Trinacty" with each flight. It also showed "Cowden" as Captain for specific flights on

August 16, 2003 and a corresponding statement which reads "N. Trinacty training" with each flight.

In response to Mr. Clark's submission, the Minister's representative states that to answer the question of whether the instructor being there taints the time, we must look to all the circumstances, who is acting as pilot-in-command? Is there a different standard when the instructor is on board? We must look to the true relationship. Ms. Caminsky also stated that records are extremely important to Transport Canada and they are given weight by reason of section 28 of the *Aeronautics Act*.

## **DISCUSSION**

The facts disclose that the student was logging pilot-in-command time after having received his float endorsement on August 11, 2003. It was Mr. Trinacty's evidence that he was pilot-in-command. There is no evidence that he was a passenger other than the instructor's log (Tab 6). Mr. Trinacty does change his logbook entries at the request of Transport Canada which in fact, as was stated by Mr. Clark, was later used against him in calculating his total number of hours logged as pilot-in-command. In reality we have Mr. Trinacty, logging time as pilot-in-command, who testified that he believed that he was pilot-in-command when he flew the aircraft, and who subsequently changed his logbook entries based on the interpretation of the regulator that his logbook contained errors as set out in Mr. Chalmers' letters to Mr. Trinacty. The Minister also urges that Mr. Trinacty admitted that Mr. Tymstra had to be there for insurance purposes.

Additionally, we have the evidence of Mr. Tymstra who said under oath that he was not pilot-in-command and he admitted at that time that he had been double-dipping (see transcript pages 1-14 of Mr. Tymstra's testimony). There is no requirement that Mr. Trinacty fly solo to accumulate these hours. Transport Canada states that the issue is confusing that we do not know who was pilot-in-command because the instructor made entries in his logbook that he was the pilot-in-command. However, this is disputed by the evidence of the instructor under oath when he stated that he was not pilot-in-command but was there for insurance purposes. Evidently, the confusion arose as to the interpretation of the policy of insurance. It is possible that the instructor and even the principals at the flying school were unclear as to the requirements under the policy of insurance. That is perhaps why after the fact, an interpretation was sought from the insurance company. This interpretation confirmed that the student could fly as pilot-in-command with an instructor as long as the flight was supervised – meaning conducted under the authority of the instructor.

This of course makes it abundantly clear that when two qualified pilots are in the cockpit, it is a good idea if they pre-determine who is logging the flight as pilot-in-command as is advised by the AIP. The flight centre now has an interpretation that should enable them to solidify their policy. While this makes sense proactively, the question is who believed that they were pilot-in-command at the times of the flights in question?

Looking to Mr. Trinacty, at the time of the flights, did he believe he was flying those hours as pilot-in-command? We see the affirmative proof of this in the student pilot log, the flight records, and the training records. Does Mr. Trinacty subsequently change his mind about who



was pilot-in-command? We do not know but he did change his record in his log. It would appear that he did so on the basis that the person in authority, being the Minister's representative, told him to in the letter dated October 27, 2004. There is no other reason. He does not say that he thought he was wrong. Looking now to Mr. Tymstra, the instructor at the time, did he believe that he flew those hours as pilot-in-command? We do not know. His personal log said "yes", which he later in oral testimony changed (at page 3 of his testimony) : "at the time I was under the assumption that I was to be on the flights for issue or for the insurance purposes and I was to go on as a passenger for all flights". The cases cited relating to solo flights are irrelevant as this was never an issue. The issue was who was pilot-in-command and the flight centre had no policy on it and after writing to the insurance company in March, it would appear that the roles would be clarified and the pilot-in-command would be declared at the outset.

We do not feel that the Minister can take great comfort in basing its case on the fact that the young pilot made the changes as directed by the Minister's officials. The fact of changing the flight times does not mean that he did not believe that he was pilot-in-command. He does not agree that he was a passenger at the time of these flights. As Mr. Clark submits, his evidence is clear on this point. This is also consistent with the oral testimony of the instructor that he logged pilot-in-command time when he should not have. It is not really relevant to determine why the instructor thought he needed to be on the flight. This is true most specifically in the light of the fact that the student could have a passenger with him as the regulation permits as long as he was the pilot-in-command.

We agree with the Member at review in his acceptance of the facts and the testimony. However, we disagree with the conclusions reached. We believe that the issue of who was pilot-in-command only became fuzzy when the Minister's officials looked to Mr. Tymstra's logbook. Mr. Tymstra's entries that he was pilot-in-command were accepted by the Minister as evidence of their content, pursuant to section 28 of the *Aeronautics Act*. However, that same section also states that these entries will be valid in the absence of evidence to the contrary. Such evidence to the contrary comes in the form of Mr. Tymstra's oral testimony at page 5 wherein he admits that he was not really pilot-in-command of those flights but was in fact double-dipping or as he referred to it in his testimony as "cheating". At this point, the Minister's officials must realize that the entries in Mr. Trinacty's logbook were correct and were not required to be changed to reflect the errors in the instructor's logbook. Rather the instructor's logbook should be corrected.

Looking to the summary filed by the Minister's representative at the review hearing as Exhibit M-1B, it would appear that on the first application the time logged as set out in the application was PIC day 122.5 plus PIC night 5.0 equals 127.5; this same record is found in Mr. Trinacty's pilot training record; Mr. Trinacty's pilot logbook is PIC day 110.5 and PIC night 5.0 equals 115.5.

However, if the entries in Mr. Tymstra's logbook as PIC of C-GUJR were in error as admitted by Mr. Tymstra under oath in his testimony and in his letter filed as Tab 5, then those 26.5 hours which were deducted by the Minister should be reinstated. After all, at the time of Tab 5, the Minister was questioning the ability to log pilot-in-command time when accompanied by the flight instructor at the time. This is clear from Mr. Schobesberger's summing up at the conclusion of the review:

We were able to demonstrate, we believe, that he had acquired approximately 26.6 or .5 hours of experience in an aircraft called Uniform Juliet Romeo, while an instructor was on board the aircraft and had logged a time as pilot in command, notwithstanding the fact that that instructor was on board.

Mr. Ryan, in his submission at review, refutes the assertions of the Minister stating that the issues have become confused: the difference between PIC time and solo time. PIC, being pilot-in-command time, has nothing to do with the time needed to be a commercial pilot. A commercial pilot licence is broken down into 200 hours total time with 100 hours being PIC time. He further stated that the flight school submits to Transport Canada 65 hours of training, 35 hours of dual and 30 hours of solo time. Mr. Trinacty took his 30 hours of solo time. He took his 35 hours of dual. The float time portion of it has nothing to do with the solo requirements so that he can make these command decisions on his own. On the facts of this matter, Mr. Trinacty did his float rating on August 11, 2003. He did his 10 hours, his touch and go solo and got his float rating (see pages 16-17 of transcript of review of Mr. Ryan's submissions).

Now, at this point as Mr. Clark has indicated in his submissions, we have two pilots on board the aircraft C-GUJR both of whom are qualified to fly float planes. The pilot-in-command is to be determined prior to take-off. They did that. See the evidence of Mr. Trinacty at page 3 of his testimony in the transcript. See also the evidence of Mr. Tymstra at the top of page 3 of his evidence and as well as question 65 at the top of page 10 of the Minister's cross-examination of Mr. Tymstra. In both references, Mr. Tymstra states that Mr. Trinacty was pilot-in-command of the whole flight for the flights in question and that Mr. Tymstra was the passenger.

At pages 47 to 49 of the transcription of Mr. Duncan Chalmers' evidence, there is a discussion of the Minister's Exhibit M-1B. At question 118, under cross-examination, Mr. Chalmers in response to the question that "if the UJR times were to have been accepted as PIC, would he have had enough time to get his commercial licence?" – to which he answered – "Yes. I believe on that first application, yes."

In the circumstances of this case, it is the opinion of this panel that the 26.5 hours deducted in the first application be reinstated thereby providing Mr. Trinacty with sufficient hours to meet the requirements for issue of his commercial pilot licence - aeroplane. In the circumstances, it is not necessary for the panel to consider the 12-month requirement for taking the flight test, as on the facts of the first application, the 12 months had not run its course.

And as a consequence, we have found that Mr. Trinacty in being given credit as pilot-in-command of flights in C-GUJR meets the experience requirements for his commercial licence at the time of his first application. It would naturally follow that he would have the required number of pilot-in-command hours for this second application without reference to the 9.8 hours flown in aircraft C-FSMS, being the subject of the second application.

## **DETERMINATION**

We refer these matters back to the Minister for reconsideration as on the facts of this case we find that the evidence of Mr. Tymstra under oath was evidence to the contrary as contemplated in

section 28 of the *Aeronautics Act* and hence negates the entries in the logbook made by Mr. Tymstra indicating that he was the pilot-in-command of those flights in aircraft C-GUJR.

February 23, 2006

Reasons for Appeal Decision by:

Faye Smith, Chairperson

Concurred:

Frank Morgan, Member

Hebb C. Russell, Member

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[\[1\]](#) Review Determination at bottom of page 11 and page 12.