

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport**, Applicant

- and -

**Kenneth W. Pineau**, Respondent

**LEGISLATION:**

*Aeronautics Act*, R.S.C. 1985, c. A-2, s. 7.7

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

**Low flying, Built-up area**

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**Review Determination**  
**William C. Pearson, Q.C.**

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**Decision: May 8, 1991**

**Heard:** Winnipeg, Manitoba, May 1, 1991

*The Minister failed to satisfy the onus and accordingly, for the attached reasons, the allegation is dismissed and the fine cancelled.*

Review Hearing on the above matter held in the Boardroom, 2nd floor, Provincial Archives Building, Winnipeg, Manitoba, at 10:00 hours on Wednesday, May 1, 1991.

The Notice of Assessment alleges that Kenneth N. Pineau contravened *Air Regulation 534(2)(a)*

"in that at or about 15:30 hours local time on August 5, 1990, at or near Grand Beach, Manitoba, you acted as pilot-in-command of an aircraft, to wit, a Cessna 172P, bearing Canadian registration marks C-GJKX, when the aircraft was flown over an open assembly of persons at an altitude of less than 1,000 feet above the highest obstacle and within a radius of 2,000 feet from the aircraft".

At the commencement of the hearing the following facts were agreed:

Kenneth W. Pineau

1. was the pilot-in-command of aircraft C-GJKX, and
2. was in the area of Grand Beach at 15:30 hours local time.

The evidence adduced by the Minister proved all the facts required, except the height of the aircraft. Here the evidence did not establish the altitude of the aircraft with any reasonable certainty.

In the words of Larry James Guarino, it flew "lower than normal" and "appeared lower than normal".

Craig Kirby, a witness called by the Minister, stated, "I felt it was low flying over Grand Beach" and "best guess 200' to 300'". There is no clear evidence of the height of the aircraft offered by the Minister. On the other hand, Kenneth Pineau, in Exhibit DH-1 and in his evidence, states he was at 2,000 feet ASL, which in the Grand Beach area was 1,000 feet above ground.

It is clear from the legislation and from the previous decisions of the Civil Aviation Tribunal that the onus of establishing the contravention is on the Minister. This proof must "on a balance of probabilities" convince that the contravention has occurred.

One must therefore weigh the evidence and be satisfied that the Minister has satisfied the onus placed upon him. There is no question the Minister has proven all required facts except the height of this aircraft above the sand and swimming area at Grand Beach.

I am not convinced on the evidence that the aircraft flew at less than 2,000 feet ASL and accordingly dismiss the allegation of the Minister.