

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Spur Aviation Ltd.**, Applicant

- and -

**Minister of Transport**, Respondent

**LEGISLATION:**

*Aeronautics Act*, R.S.C. 1985, c. A-2, s. 7.1(1)c)

**Public Interest, Cancellation of an Operating Certificate, Cancellation of an Approved Maintenance Organization Certificate**

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**Review Determination**  
**Gordon R. Mitchell**

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**Decision: May 22, 1997**

*I confirm the Minister's decision to cancel Operating Certificate #6707 held by Spur Aviation Ltd. Cancellation pursuant to paragraph 7.1(1)(c) of the Aeronautics Act is in the public interest.*

**The Review Hearing** on the above matter was held on March 25, 26 and 27, 1997 at J.G. Moore & Associates Ltd., in the city of Edmonton, Alberta. All three files and Exhibits have been submitted as one case.

A motion to amend the Notices of Cancellation was made at the outset. These were minor changes to the benefit of the Applicant, and they were accepted.

For ease of reference, the amendments have been incorporated into the Notice of Cancellation as follows:

Pursuant to section 7.1(1)(c) of the *Aeronautics Act*, the Minister of Transport has decided to cancel the above indicated Canadian aviation document for the following reasons:

The public interest, and in particular the record in relation to aviation of Spur Aviation Ltd. and Spur Aviation principal Robert O Jensen, warrant cancellation. The elements of that public interest are listed as *Grounds for the Cancellation* in the attached Appendix A.

## **APPENDIX A to NOTICE OF CANCELLATION**

### Grounds for the Cancellation

Tables 1 to 8 below itemize the bulk of the record with respect to aviation of Spur Aviation Ltd. and Robert O Jensen, and in the opinion of the Minister that record shows that Spur Aviation and Robert O Jensen have not consistently conducted aviation activities both safely, and in compliance with applicable regulations and standards.

#### **Table 1**

Suspensions of approved company documents (operating certificates and approved organization certificates) for cause

1. 20 Dec 1994 Operating Certificate suspension (Spur Aviation)
2. 19 Dec 1994 Approved Maintenance Organization suspension (Spur Aviation)
3. 18 Aug 1994 Flight Training Operating Certificate suspension (Spur Aviation)
4. 17 Aug 1994 Operating Certificate Suspension (Spur Aviation)
5. 22 April 1994 Approved Maintenance Organization Suspension (Spur Aviation)
6. 20 Apr 1994 Dangerous Goods Authority suspension
7. 10 Dec 1993 Approved Maintenance Organization Suspension (Spur Aviation)
8. 22 Nov 1993 Approved Maintenance Organization Suspension (Spur Aviation)
9. 13 July 1993 Approved Maintenance Organization (Spur Aviation)
10. 14 Dec 1979 Flight Training Operating Certificate suspension (Spur Aviation)

#### **Table 2**

##### **Air Regulation/Aeronautics Act violations**

1. 1994 fine for violating Air Regulations 826 and 210
2. 1994 fine for violating Air Regulation 826
3. 1993 suspension for violating Aeronautics Act 7.3 (1)(c), Air Regulation 221 (three counts), and Air Navigation Order Series VII No2 Sec 3
4. 1988 fine for violating ANO VII No. 3

5. 1987 fine for violating Air Regulation 221
6. Oct 1984 convictions on Air Carrier Regulations violations – operation without a licence
7. 1983 Suspension for violating Air Regulation 221
8. Oct 1976 Conviction on various violations of the Aeronautics Act
9. Jun 69 Conviction flying without an IR rating in IFR weather
10. Nov 59 Conviction – Operation of a Commercial Air Service without a valid licence

**Table 3**

**Suspensions of flight authorities and findings of unfit for flight**

1. 21 Sep 1995 Suspension of C of A GXSC
2. 16 Dec 1994 Suspension of C of A FWXE
3. 21 Apr 1994 Detention of C of A Cessna 210 FJQE
4. 21 Apr 1994 Detention of C of A Cessna 172 GJUB
5. 21 Apr 1994 Detention GWAI
6. 21 Apr 1994 Detention FWXE
7. 21 Apr 1994 Detention GXSC
8. 21 Apr 1994 Detention GSBK
9. 16 Dec 1994 Suspension of C of A FEKY
10. 14 Sep 1994 Suspension of C of A GSBK
11. 02 Aug 1994 Suspension of C of A GSBK
12. 6 Sep 1978 Suspension of C of A Beech 18 CF-WWV (Spur Aviation)
13. 28 Sep 1976 Suspension of C of A GWOF

**Table 4**

**Issuance of warnings regarding the possible suspension of authorities or licenses held**

1. 30 Dec 1991 Notice of Suspension Approved Maintenance Organization (Spur Aviation)
2. 10 Dec 1990 Notice of Operating Certificate suspension ( Spur Aviation c/o/b as Great Bear Aviation)
3. 18 Sep 1984 CTC certificate show cause (Spur Aviation)
4. 29 Jan 1979 Threat to withdraw Flight Training course approval (Spur Aviation)
5. 14 Jan 1976 Warning regarding inadequacy of flight training unit, Mr. Jensen's failure to fulfill responsibilities as CFI
6. 16 Dec 1975 Operating Certificate suspension ( Spur Aviation)
7. 12 Sep 1975 CTC certificate show cause (Spur Aviation)

**Table 5**

## **Interference with duties of company personnel**

Darcy Cherwaty letter dated Oct 1993 and statement from R. Robert O Jensen 12 Apr 1995

### **Table 6**

#### **Inability to comply with conditions for re-instatement**

1. 10 Jan 1995 letter from Spur requesting reinstatement of documents. Conditions not met
2. 14 Jan 1995 letter from Spur requesting reinstatement of documents. Conditions not met
3. 24 Jan 1995 letter from Spur requesting reinstatement of documents. Conditions not met
4. 02 Feb 1995 letter from Spur requesting reinstatement of documents. Conditions not met
5. 15 Mar 1995 letter from Spur requesting reinstatement of documents. Conditions not met
6. 29 Mar 1995 letter from Spur requesting reinstatement of documents. Conditions not met
7. 20 Apr 1995 letter nominating Falconar and Toll as Maintenance Managers, nominations rejected in TC letter 22 Apr 1995 based on requirements of AWM 573.209. Conditions for reinstatement not met
8. 24 Apr 1995 letter from Spur nominating R. Hodge as Maintenance Manager. Unacceptable proposal
9. 29 May 1995 nomination of D. Klapstein as D of M and Q manager – not acceptable for both. D. Klapstein accepted as D of M pending interview
10. 13 June 1995 nomination of C. Falconar as Quality Manager with new supporting documentation. Acceptable pending successful maintenance Manager exam and interview.
11. 21 Sep 1995 aircraft presented for PPC without valid C of A. Aircraft was certified serviceable by R.O. Jensen on 15 Sep 1995 Our inspection revealed AWD overdue and other mechanical defects
12. 26 Sep 1995 Assessment interview of Klapstein and Falconar carried out. Both individuals had been assessed by Spur as qualified and trained in accordance with the AWM 573 and the company MCM. Klapstein found acceptable, Falconar unacceptable.
13. 22 Oct 1995 Letter from Spur nominating A. Garvin as QA Manager on a part time basis. Not acceptable.
14. 15 Dec 1995 letter from Spur nominating A. Garvin and W. Lupton as QA managers both on a part time basis.

### **Table 7**

#### **Aircraft condition notices (failure to meet applicable standards)**

1. 16 Dec 1994 Notice of Aircraft Inspection, GXSC
2. 16 Dec 1994 Notice of Aircraft Inspection, FWXE
3. 18 Sep 1994 Notice of Aircraft Inspection, GJUB
4. 14 Sep 1994 Notice of Aircraft Inspection, FWXE
5. 14 Sep 1994 Notice of Aircraft Inspection, GWAI
6. 14 Sep 1994 Notice of Aircraft Inspection, FEKY
7. 14 Sep 1994 Notice of Aircraft Inspection, GSBK
8. 14 Sep 1994 Notice of Aircraft Inspection, GXSC
9. 13 Sep 1994 Notice of Aircraft Inspection, GISV
10. 04 Aug 1994 Notice of Aircraft Inspection, GXSC
11. 30 Jun 1994 Notice of Aircraft Inspection, FWXE
12. 19 Apr 1994 Notice of Aircraft Inspection, FJQE
13. 19 Apr 1994 Notice of Aircraft Inspection, GSBK
14. 18 Apr 1994 Notice of Aircraft Inspection, GJUB
15. 18 Apr 1994 Notice of Aircraft Inspection, GWAI
16. 22 Dec 1993 Notice of Aircraft Inspection, GSBK
17. 17 Aug 1993 Notice of Aircraft Inspection, FGBA
18. 17 Aug 1993 Notice of Aircraft Inspection, GNTE
19. 17 Aug 1993 Notice of Aircraft Inspection, FEKY
20. 06 Jul 1993 Notice of Aircraft Inspection, FWXE
21. 06 Jul 1993 Notice of Aircraft Inspection, FGBA
22. 06 Jul 1993 Notice of Aircraft Inspection, FJQE
23. 16 Feb 1993 Notice of Aircraft Inspection, FJQE
24. 16 Feb 1993 Notice of Aircraft Inspection, FWXE
25. 15 Feb 1993 Notice of Aircraft Inspection, FWAI
26. 15 Feb 1993 Notice of Aircraft Inspection, GRJL
27. 27 Nov 1991 Notice of Aircraft Inspection, GWOE
28. 27 Nov 1991 Notice of Aircraft Inspection, GKOG
29. 04 June 1991 Notice of Aircraft Inspection, GKOG
30. 31 Oct 1990 Notice of Aircraft Condition GKOG
31. 26 Apr 1989 Notice of Aircraft Condition, GSBK
32. 10 Mar 1988 Notice of Aircraft Condition GSBK
33. 06 Sep 1989 Notice of Aircraft Inspection, GISV
34. 20 Mar 1989 Notice of Aircraft Inspection, FGBA
35. 10 Mar 1988 Notice of Aircraft Inspection, GWAI
36. 10 Mar 1988 Notice of Aircraft Inspection, FJQE
37. 10 Mar 1988 Notice of Aircraft Inspection, FEKY
38. 23 Mar 1987 Notice of Aircraft Inspection, GWAI
39. 29 Apr 1987 Notice of Aircraft Inspection, FGBA
40. 15 Jul 1980 Notice of Aircraft Inspection, FMBO

**Table 8**

**Aircraft which were under the control of Spur Aviation Ltd. and/or R.O.  
Jensen control and were involved in accidents/incidents/occurrences**

1. 16 July 1994 Ditching Piper PA23 GNTE
2. 24 Dec 1993 Engine failure GSBK
3. 08 Apr 1994 Gear retraction on landing Piper PA23 GXSC
4. 11 Sep 1993 Aircraft sinking Cessna 185 GWLC
5. 19 July 1993 Landing without clearance Piper PA23 GNTE
6. 22 Apr 1993 Smoke in the cockpit Cessna 210 FJQE
7. 21 Dec 1991 Wing fire in flight Piper PA23 GREX
8. 29 Jun 1991 Fuel cap not installed Cessna 185 GWLC
9. 04 July 1989 Loss of separation in IFR Piper PA23 GREX
10. 24 Jun 1986 Accident Cessna 172 GRLY
11. 1 Aug 1984 Gear and prop damage Beech 18s FMBO
12. 10 Sep 1982 Crash – Continued VFR into IFR weather Cessna 172 GXZB
13. 15 July 1978 Aircraft on floats ran into shoal Cessna 172 GXZB
14. 14 May 1969 In flight Breakup Piper PA23 FLWX

## OVERVIEW

In December 1994 Spur Aviation Ltd. ceased operating as its Operating Certificates #6707 and #3432 and Approved Maintenance Organization Certificate #110-91 were suspended by Transport Canada for alleged infractions of paragraph 7.1(1)(c) of the *Aeronautics Act*.

During 1995, Spur Aviation Ltd. principal, Robert O. Jensen, applied six times by letter to Transport Canada for reinstatement (see Exhibit M-7, Table 6). Permission was not granted.

Exhibit M-7 Table 6 also shows nominations of prospective staff to meet the needs to sanction Spur Aviation Ltd.'s return to operating status. The majority of those nominated were not acceptable by Transport Canada as it was felt they did not have the necessary qualifications.

On April 29, 1996, the Operating Certificates #6707 and #3432 and Approved Maintenance Organization Certificate #110-91 all relating to Spur Aviation Ltd. were cancelled. In Transport Canada's view Spur Aviation Ltd. had not met the requirements necessary to allow resumption of its operations.

## CASE PRESENTATIONS

The Minister's first witness, **Steve MacNab**, Superintendent Edmonton Division presented Exhibit M-1. This was a copy of Letters Patent and showed that Spur Aviation Ltd. was qualified to be the holder of a Canadian aviation document and that Robert O. Jensen was a principal of that company. The Letters Patent date of creation was December 6, 1971.

He further testified that the Notice of Cancellation and the service of it were in accord with the provisions of paragraph 7.1(1)(c) and subsection 7.1(2) of the *Aeronautics Act*.

Mr. MacNab produced proof of his authority to act by introduction of his appointment as acting Director of Airworthiness during the period in question, and this included his ministerial delegation of authority to suspend or cancel a Canadian aviation document.

He testified further that Spur Aviation Ltd. had been under suspension for approximately sixteen months at the time of his determination to cancel its documents in April 1996.

He pointed out the significance of the record that showed a continuing failure to comply with regulations and standards over a 38-year period.

The Minister's second witness, Airworthiness Inspector **D. Alston**, related that he had reviewed the files in respect to Spur Aviation Ltd. and Robert O. Jensen and made recommendations with respect to disposition of the company. In reviewing the files, he created the tables that were entered in evidence.

The Applicant's first witness, **Mr. A.A. (Alf) Garvin** of Kal-Gar Aviation Consulting, was called and sworn. Mr. Garvin explained the contents of a file (Exhibit D-2) that had been presented. The first six pages of this file were comments and observations by Mr. Garvin to Mr. Jensen regarding the material therein. The latter part of the file contained communications to Mr. Swanson from Mr. Jensen, to Mr. Jensen from Mr. Garvin, to Mr. Swanson from Mr. Jensen, to Mr. Swanson from Mr. Garvin, to Mr. Jensen from Mr. Garvin, to Bill Lupton from Mr. Garvin and to Mr. Jensen from W.T. Lupton.

Mr. Garvin was asked if he thought the number of infractions was high for Spur's type and size of operation. He answered yes, but his written opinion did not change.

Mr. Garvin, on cross-examination, stated that Spur's assurances of future compliance with standards had been a factor in the reinstatement of operating authority suspensions for Spur Aviation Ltd. prior to December 1994.

The Applicant's second witness, **Robert O. Jensen**, was called and sworn. Mr. Bassie, Counsel for the Applicant, felt that his witness should be allowed to revisit any of the items shown in Exhibits M-2 to M-9, a total of 110 items, to argue their validity.

These violations/incidents/occurrences had been reviewed in some cases; in others no review was requested, and the penalty was paid. The result was that decisions had been made, and it was not the responsibility of this Review Hearing to change or interfere with those decisions. The 110 items are a matter of record and were presented as such.

The witness, Mr. Jensen, and his counsel referred to these items of record regularly regardless of the fact that I had stated this would be unacceptable as we were not there to revise issues that were already decided.

There were many areas of conflict with Mr. Jensen and his counsel, Mr. Bassie, and eventually after some "book thumping" by Mr. Jensen, he, Mr. Jensen, was named as a hostile witness.

Mr. Bassie stated that he was hostile too and indicated that he might leave the hearing!

The following Exhibits were presented during the Review Hearing:

M-1 *LETTERS PATENT*, Spur Aviation Ltd.

M-2 TABLE 1, listing ten items of Suspension

M-3 TABLE 2, listing ten items of *Air Regulations* and *Aeronautics Act* violations

M-4 TABLE 3, 13 items – Suspension of flight authority and unfit for flight

M-5 TABLE 4, 7 items – Warnings.

M-6 TABLE 5, 2 items – Letter from Jensen to Civil Aviation Tribunal, Letter from Cherway to Jensen.

M-7 TABLE 6, 14 items – Inability to comply with conditions for reinstatement and letters of nomination for staff.

M-8 TABLE 7, 40 items – Notices of Aircraft Inspection

M-9 TABLE 8, 15 items – Accidents/Incidents/Occurrences

D-1 Letter from Kal-Gar Aviation Consulting to R.O. Jensen.

D-2 Report from Kal-Gar Aviation Consulting to R.O. Jensen, Spur Aviation Ltd.

D-3 Copy of double page from C-GXSC Log Book (pg. 8).

D-4 Letters, applications

## CONCLUSION

Mr. MacNab did have the authority as acting Director of Airworthiness to suspend or cancel a Canadian aviation document.

The time span covered by the documents produced and relating to this Review Hearing and involving Spur Aviation Ltd. and Robert O. Jensen begins in 1959 and continues through until the cancellation of pertinent documents on April 29, 1996.

The items listed in the Exhibits took place in the following years:

<b>Year</b>	<b>Items</b>	<b>Reasons as shown in Exhibits M-2 to M-9 Air Regs/Aeronautics Act/ANO</b>
1959 to 1974	3	Violations/Suspension of flight authority/Unfit for flight/Aircraft condition notices/Fail
1975 to 1992	37	standards/Accidents/Incidents/Occurrences/



1993 & 1994	54	Suspension of company documents.
1995	16	— (1 C of A Suspension, 6 requests for reinstatement. 8 letters nominating staff, 1 letter, staff duties)
Total	110	

NOTE: 1993 AND 1994

Mr. Bassie in final argument refers, in his words, to so-called infractions and that the Applicant was not treated fairly and further that Transport Canada employees were unreasonable, punitive and capricious in dealing with the Applicant.

I believe that Transport Canada employees were carrying out their duties in relation to assuring that aircraft operators were complying with regulations and standards established to maintain safe operations. If I were to fault Transport Canada, it would be only in not taking the action they did earlier.

Mr. Jensen and his counsel, Mr. Bassie, would have us believe that all 110 counts (Exhibits M-2 to M-9) were not justified and were made only because Mr. Jensen/Spur Aviation Ltd. were being unfairly monitored by Transport Canada.

Mr. Bassie further states that Mr. Jensen, as an employee of Spur Aviation Ltd., was extremely careful to ensure that public safety was not jeopardized.

This is not born out in fact. The chart at the bottom of the preceding page (Page 8) shows a phenomenal increase in deficiencies occurring in 1993 and 1994.

The Canadian aviation industry on the whole has a history that is envied by many other countries.

I believe our Canadian approach to a safe flying record is second to none. Many factors enter the picture. A serious attitude to this end must be a prime requisite.

Our regulations are written with a logical safety margin. If everyone followed these religiously, the chance of accidents would be few.

Fortunately the majority of the Canadian operators adhere to the regulations. Unfortunately there are those, limited in number thank goodness, who believe they should rewrite the rules to suit themselves.

This minority group insists on travelling very close to the edge, some setting the stage for very serious accidents and managing to get away with shoddy operations. This group seems to have the belief that they are better able to set the standards than our experts who have done remarkably well over the years.

What about the travelling public? They too have rights. They should know that a Canadian operator is a safe operator.

The public interest comes to the forefront here. The public must have the assurance that flying with a licensed Canadian operator is safe.

## **DETERMINATION**

**I confirm the Minister's decision to cancel the following documents held by Spur Aviation Ltd. (1) Approved Maintenance Organization Certificate #110-91, (2) Operating Certificate #6707, (3) Operating Certificate #3432. Cancellation pursuant to paragraph 7.1(1)(c) of the *Aeronautics Act* is in the public interest.**

Gordon R. Mitchell  
Member  
Civil Aviation Tribunal