

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport, Applicant**

- and -

**William Henry Whelan, Respondent**

**LEGISLATION:**

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

**Landing, Built-up area, Balloon**

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**Review Determination**  
**Jack R. Ellis**

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**Decision: December 10, 1992**

***THE MINISTER'S ALLEGATION IS UPHELD BUT THE PENALTY IS REDUCED TO \$250.00. THIS AMOUNT, PAYABLE TO THE ORDER OF THE RECEIVER GENERAL FOR CANADA, IS TO BE RECEIVED BY THE CIVIL AVIATION TRIBUNAL AT THE ABOVE ADDRESS WITHIN 15 DAYS OF SERVICE OF THE PRESENT DETERMINATION.***

**The Review Hearing** convened at the Tax Court of Canada, Centennial Towers, 200 Kent Street, 2nd Floor, Motions Room in the City of Ottawa, Ontario on Thursday, November 26, 1992 at 10:00 hours.

**BACKGROUND**

This Review Hearing results from a NOTICE OF ASSESSMENT OF MONETARY PENALTY dated May 26, 1992 issued pursuant to section 7.7 of the *Aeronautics Act*. The Minister of Transport assessed a monetary penalty on the grounds that:

"on or about February 13, 1992 at approximately 9:55 a.m. local time you, as pilot-in-command, landed a Raven balloon registered C-GULS in a built-up area within the City of Gatineau, Quebec, namely Ecole Polyvalente Gatineau School."

According to a pre-hearing agreement on February 13, 1992, Mr. Whelan agreed that he had landed the balloon at the school in question.

## **EVIDENCE**

Inspector Len Kaufman was sworn and under questioning by Mr. Kim Trethewey he explained that his duties included investigations under the *Aeronautics Act* and *Air Regulations*. Together with Inspector Oscar Binder, Mr. Kaufman was assigned to monitor the balloon events at the Winterlude Festival in Ottawa February 13 to 17, 1992.

On the morning of February 13, 1992 the event was a "Hare and Hound Race", where one balloon is airborne some time ahead of the others. The first balloon, the "Hare", is intended to land some distance away and set out a target which the following balloons, "Hounds", try to hit while flying over by dropping a projectile consisting of a bag of dry beans with an identifying streamer attached.

Inspectors Kaufman and Binder followed the "Hare" balloon, by automobile, losing sight of it periodically but arriving a few minutes after it landed in the school yard. The balloon had been deflated and the target set out.

Inspector Kaufman introduced himself to the pilot, Mr. Whelan and outlined subsection 534(7) of the *Air Regulations* which states, in part that:

"Except in accordance with an authorization issued by the Minister, no person shall cause any aircraft ... land on, any surface within the built-up area of any city ... unless (a) that surface is an airport or a military aerodrome".

Inspector Kaufman requested that the event be called off and Mr. Whelan complied by using a loud hailer to warn off the following balloons.

A map of the area marked (Exhibit M-1) and photos of the area marked (Exhibit M-2) were introduced to describe the area where the balloon had landed. A letter from Mr. Whelan to Transport Canada outlining the reasons for the flight route and the landing in the school yard was introduced and marked (Exhibit M-3).

On cross examination Mr. Elias explained that he was unfamiliar with the proceedings but that he was President of the National Capital Balloon Association and a qualified balloon and helicopter pilot. Mr. Elias questioned Inspector Kaufman at some length to confirm that Kaufman had no prior knowledge of balloons or their operation. Inspector Kaufman agreed but insisted that the area in question was a built-up area and therefore the landing breached the *Air Regulations*. He also pointed out that there were safe areas close by that could have been used for landings as evidenced by the fact that the other balloons used them as did balloons in another similar event in the afternoon of the same day.

Inspector Binder was sworn and confirmed the testimony of Inspector Kaufman and explained that it was he who had taken the photos.

Miss Tina Daniels was sworn as the first witness for Mr. Whelan. Questioned by Mr. Elias she explained that she had 50 hours experience in balloons, mostly as a navigator and some with Mr. Whelan. She described the direction of the flight in detail using a map entered as (Exhibit D-4), pointing out that their first choice for the target had been Lac Beauchamp but that on descent, the winds altered considerably and they were blown too far west. After trying another landing and again being blown westward the school was chosen as a landing site.

Mr. Whelan was sworn and questioned by Mr. Elias. He pointed out that he had 575 hours experience in balloons, much of it in competition and described, in detail, the flight including the winds at various levels and his decisions regarding the various attempts at landing. He expressed a concern for the following balloons which might not have found a safe landing place if the target had been placed further north due to the proximity of the Gatineau Hills and the lack of familiarity with the terrain by visiting pilots. He expressed his opinion that the school was quite safe for a landing and the only site open to him under the circumstances.

## **SUMMARY**

In summary Mr. Trethewey claimed that the area was obviously built-up and that the landing was primarily to allow the event to proceed, that it was ill-considered for those reasons and not within the regulations.

Mr. Elias in his summary said that school sites were safe and that only the winds at that moment could be considered since they change quickly. He felt the landing had been safe.

Mr. Trethewey spoke to sanctions pointing out that the allowable penalties were a 7 to 14 day suspension or up to a \$500.00 fine. His intent was to use the fine to deter others from doing the same and to set an example. Mr. Elias felt that any fine should fit the case and not be used as an example.

## **DECISION**

It is obvious that the school site has to be considered to be in a built-up area within the regulations.

It also seems obvious to me that Mr. Whelan just did not consider the regulations when he landed. Enthused with the contest and with concern for those following as he perceived it, the school yard was his choice. Given his ability as a balloon pilot he was quite capable of landing safely where he did.

In passing, this Tribunal member feels that any school property, during a day when school is in session, should be considered unsafe. Had a few hundred children been allowed out of school for recess or lunch, at the precise moment of landing, I can see a very real possibility for serious problems.

As for the sanction, even a fourteen day penalty for a balloon pilot would pose no real hardship since this is a sport for pleasure and not a matter of income as it would be for a senior airline

pilot. To call for the maximum penalty therefore seems harsh. There is an argument to be made that such a penalty should be an object lesson, but it seems to me that the point can be made adequately at half the maximum fine.

**I THEREFORE FIND THAT THE REGULATIONS WERE CONTRAVENED AS SET OUT BY THE MINISTER, BUT I RULE THAT THE FINE BE REDUCED TO \$250.00.**