

TRANSPORTATION APPEAL TRIBUNAL OF CANADA

BETWEEN:

Hélicoptères Panorama Ltée, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

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

Canadian Aviation Regulations, SOR/96-433, ss. 571.02(1), 571.03, 605.84(1), 605.93(1), 605.94(1) and 706.02

Imprecise Entries in the Technical Records, Failure to Follow MCM Procedures, Imprecise Entries in Journey Log

Review Determination
Michel G. Boulianne

Decision: December 29, 2004

TRANSLATION

The decision of the Minister of Transport is upheld. The total amount of the monetary penalty of \$36,250 is confirmed. The total amount of the monetary penalty is payable to the Receiver General for Canada and must be received by the Tribunal within 35 days of service of this determination.

[1] A **review hearing** on the above matter was held at the courthouse in Alma, Quebec, from December 6 to 8, 2005.

I. FACTS

[2] This is the review of a decision by the Minister to assess a monetary penalty of \$36 250 pursuant to sections 7.7 to 8.2 of the *Aeronautics Act*, R.S.C. 1985, c. A-2, for contraventions of the *Canadian Aviation Regulations*, SOR/96-433 (CARs). The notice of assessment of monetary penalty states:

[translation]

1. On or about December 9, 2004, in the vicinity of Alma Airport, you performed maintenance work on the helicopter registered as C-GVED without using methods, techniques, practices, parts and materials that were in accordance with recognized industry practices at the time the maintenance work was performed, to wit, the installation of an antenna on the left skid fastened by means of metal clamps covered in duct tape, in contravention of subsection 571.02(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

2. On or about December 9, 2004, in the vicinity of Alma Airport, while you were performing maintenance work on the helicopter registered as C-GVED, namely, the installation of an antenna on the left skid, you failed to ensure that the details required by Chapter 571 of the Airworthiness Manual were entered in the helicopter's technical record in respect of the task performed, in contravention of section 571.03 of the *Canadian Aviation Regulations*.

Penalty: \$1 250

3. Between August 9, 2004, and November 11, 2004, at or in the vicinity of Micoua, Quebec, you permitted to be conducted 88 [amended to 8 at the hearing - see ¶ [5] of the reasons below] take-offs of the helicopter registered as C-GBKH that was in your legal custody and control when the aircraft did not meet the requirements of airworthiness directive CF-2004-05R1, in contravention of subsection 605.84(1) of the *Canadian Aviation Regulations*.

Penalty: \$12 500

4. From June 9, 2004, to September 27, 2004, you made 50 inaccurate entries in the journey log of the helicopter registered as C-GBKX, to wit, flights were conducted by a pilot other than the one entered and signatures were forged, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

5. From June 7, 2004, to September 6, 2004, the air time of 12 flights or series of flights and the cumulative air time were not entered in the journey log of the aircraft registered as C-GBKX by a person designated by Hélicoptères Panorama Ltée, in contravention of subsection 605.94(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

6. From August 9, 2004, to October 7, 2004, you made 11 inaccurate entries in the journey log of the helicopter registered as C-GBKH, to wit, 4 signatures were forged and the difference between the air time and the flight time is excessive for 8 entries, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

7. From October 3, 2004, to November 10, 2004, the air time of 3 [amended to 2 at the hearing – see ¶ [5] of the reasons below] flights or series of flights and the cumulative total air time were not entered in the journey log of the aircraft registered as C-GBKH by a person designated by Hélicoptères Panorama Ltée, in contravention of subsection 605.94(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

8. From July 12, 2004, to August 23, 2004, you made 5 inaccurate entries in the journey log of the helicopter registered as C-GHJG, to wit, the difference between the air time and the flight time is excessive, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

9. From July 31, 2004, to October 23, 2004, the air time of 2 flights or series of flights and the cumulative total air time were not entered in the journey log of the aircraft registered as C-GHJG by a person designated by Hélicoptères Panorama Ltée, in contravention of subsection 605.94(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

10. From September 1, 2004, to September 8, 2004, you made 4 inaccurate entries in the journey log of the helicopter registered as C-GVED, to wit, the difference between the air time and the flight time is excessive, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

11. From June 16, 2004, to August 29, 2004, you made 9 inaccurate entries in the journey log of the helicopter registered as C-FGAV, to wit, 5 flights were made by a pilot other than the one entered, 2 signatures were forged and the difference between the air time and the flight time is excessive for 4 other flights, in contravention of subsection 605.93(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

12. From June 21, 2004, to September 26, 2004, the air time of 16 flights or series of flights and the cumulative total air time were not entered in the journey log of the aircraft registered as C-FGAV by a person designated by Hélicoptères Panorama Ltée, in contravention of subsection 605.94(1) of the *Canadian Aviation Regulations*.

Penalty: \$1 250

13. On or about July 5 or 12, 2004, in the vicinity of Micoua, Quebec, Hélicoptères Panorama Ltée operated the aircraft registered as C-FGAV when maintenance of that aircraft had not been performed in accordance with paragraph 4.3.1 of the maintenance control manual (MCM) of Hélicoptères Panorama Ltée, to wit, an oil filter switched to by-pass and operation continued with no corrective action for the rest of the week, in contravention of section 706.02 of the *Canadian Aviation Regulations*.

Penalty: \$5 000

14. On or about August 14, 2004, and on or about August 28, 2004, in the vicinity of Micoua, Quebec, Hélicoptères Panorama Ltée operated the aircraft registered as C-GBKH when maintenance of that aircraft had not been performed in accordance with paragraph 4.3.1 of the maintenance control manual (MCM) of Hélicoptères Panorama Ltée, to wit, the aircraft had experienced a number of engine failures and operation continued without these events being entered in the technical logs, in contravention of section 706.02 of the *Canadian Aviation Regulations*.

Penalty: \$5 000

[3] After the request for review was filed, the hearing was initially scheduled for October 2005. It was postponed, however, until the above-mentioned dates as the Minister's representative could not be present for personal reasons.

[4] At the hearing, Denis Paré, representing the Minister, was assisted by Guy Hamel, Civil Aviation Safety Inspector (Aviation Enforcement), Transport Canada. Brian Jenner represented Hélicoptères Panorama Ltée.

[5] A request for amendment was granted for counts 3 and 7 of the notice of assessment of monetary penalty. In count 3, the number 8 replaces the number 88, and in count 7, the number 2 replaces the number 3.

[6] Mr. Jenner argued that the correction to count 3 of the notice of assessment of monetary penalty constituted so grievous an error in terms of volume that this number was inadmissible. Mr. Paré replied that there had indeed been 88 offences, but that all but eight were minor ones. The member allowed both corrections.

[7] According to Mr. Paré, the applicant had committed offences that affected aviation safety. It is necessary to ensure, as effectively as possible, voluntary compliance with the regulations for public safety reasons and the economic consequences of the measures taken in respect of the holder.

[8] A search was conducted at the applicant's head office in response to a complaint made by one of its employees to Transport Canada. During the search, the Transport Canada inspectors discovered and witnessed an offence being committed.

[9] Each count is dealt with as a single occurrence and the monetary penalty is the minimum for each offence according to Transport Canada's Aviation Enforcement Policy Manual and not according to the CARs. Sections 103.08(1) and (2) of the CARs stipulate the maximum monetary penalties payable.

II. EVIDENCE

[10] For easier reading, the reasons follow the order in which the testimony was heard. Thus, the counts are sometimes presented out of order, since some witnesses testified with regard to more than one count.

A. Evidence of the Respondent

Counts 1 and 2

(1) *Yves Thibodeau*

[11] The first witness for the Minister was Yves Thibodeau, Civil Aviation Safety Inspector (Aviation Enforcement), Transport Canada.

[12] At the start of his testimony, a list of documents the respondent intended to produce during testimony was filed, unmarked as an exhibit. Mr. Jenner stated he might object to certain documents on the list being produced if they had not previously been disclosed.

[13] Witness Thibodeau was present on December 9, 2004, when the search warrant was executed at the applicant's premises.

[14] On that occasion, upon entering the premises, he allegedly saw a helicopter, owned by the applicant, preparing to take off. When the search officers went to get the journey log, he noticed that an antenna was attached by clamps to one of the helicopter's skids.

[15] Since this was not a device usually attached to a helicopter, he asked to see the log book. He was directed to the maintenance manager.

[16] Noting that there was no entry for the antenna, he then asked the maintenance manager whether the installation had been approved in accordance with the CARs; the answer was negative. He therefore took a series of photographs, filed in a bundle as exhibit M-1 and

identified from A to F, of an AS 350 BA (ASTAR) helicopter. The antenna can clearly be seen in these photographs, and in exhibit M-1E a wire can be seen connecting the antenna to a box. The certificate of registration of aircraft C-GVED was also filed, as exhibit M-2.

[17] The usual procedure is to apply to the Minister of Transport for approval to make modifications to the aircraft and **then** proceed with the installation.

[18] There is no entry for the installation of an antenna in the extract from the flight record (M-3) for December 8 or 9, 2004. This modification would be done only after issuance of a supplemental type certificate (STC).

[19] Count 2 follows from the first count. It states that there is no indication anywhere in the flight log that a modification (namely, the addition of an antenna) was made.

[20] The technical log, an extract of which is produced as exhibit M-4, shows no entries for December 4 and 9, 2004 concerning the installation of an antenna.

[21] Following these findings, the witness telephoned his manager to ask his permission to ground the helicopter. At the same time, while he was awaiting this authorization, the pilot brought him the antenna, placed it on the counter and told him that the problem was resolved since she had removed the said antenna.

[22] The respondent also filed, as exhibit M-5, a Minister of Transport document pertaining to model AS 350 C (ASTAR). In the end, the witness did not use this document because of a possible challenge.

[23] According to Mr. Thibodeau, the requirements of the CARs were not met, as can be seen from exhibits M-3 and M-4.

[24] On cross-examination, the witness stated that it was Mr. Hamel who had told him a helicopter was about to leave and that the Royal Canadian Mounted Police were also present.

[25] In photo M-1E, Mr. Thibodeau confirmed that the instrument was placed on the instrument panel, but was not installed. He also confirmed that the external load was fastened with metal clamps.

(2) *Guy Hamel*

[26] In the afternoon, Mr. Hamel, Civil Aviation Safety Inspector (Aviation Enforcement), Transport Canada, was heard. He has held this position for four years. Among his qualifications, he holds an airline pilot transport licence, is a class 1 instructor and has accumulated nearly 7 000 pilot hours.

[27] He was co-owner of Dynamair Aviation Inc., a company that made charter flights and operated a flight training school. This company also held an aircraft modification certificate and did remote sensing.

[28] In November 2004, as a result of an investigation assigned by his immediate superior, Diane Desmarais, he met with Paul Charest. Mr. Hamel took his statement, which he considered relevant, and decided to investigate allegations that entries had not been made in the technical records and that inaccurate or false entries had been made regarding the maintenance and flight time of some of the applicant's aircraft.

[29] He prepared a checklist of the technical records, administrative documents, flight reports, maintenance reports and invoices. He first obtained a search warrant, which he executed December 9, 2004, and, together with Mr. Thibodeau, the previous witness, they saw the applicant commit a further offence right before their eyes. On returning to his office, he compiled the flying time.

[30] On that occasion, they seized the following documents:

- the flight log of each helicopter (containing the flight time, the flight time starting from movement on the ground, the air time from the time the helicopter left the ground);
- technical records;
- the airframe log;
- administrative documents such as weekly reports completed by the pilots for the entries of pilot hours/week;
- flight reports also produced by the pilots and turned in to the company for the billing of clients;
- client invoices;
- maintenance documentation.

[31] With all these documents, he prepared a compilation of the many irregularities, unlogged flights, flights with blatant errors, false entries and forged signatures. To corroborate everything, he met with the pilots in question and took their statements. He then submitted the recommendations to his manager and a notice of assessment was sent to the applicant.

[32] On December 9, 2004, the Transport Canada representatives carried out the authorized search in the presence of Royal Canadian Mounted Police personnel. They met straightaway with André Martel, the president, operations manager and chief pilot of Hélicoptères Panorama Ltée, and explained the warrant to him. He was given a list of the offences and of the documents required. In answer to a question in this regard, Mr. Martel confirmed that the helicopter, photographs of which were produced as exhibit M-1, had been about to depart.

[33] The witness told Mr. Martel that he was going to the helicopter to get the flight log, make a copy of it and put it back in the helicopter so that it could leave.

[34] Regarding exhibit M-1, the witness himself took the photographs in Mr. Martel's presence after noticing the antenna on the left skid. He also confirmed that pilot Anne Thiffault had removed the antenna and placed it on the counter. The investigative team allowed the helicopter identified in the photographs of exhibit M-1 to leave.

[35] Before this intervention, the helicopter had been about to leave with two wildlife officers to track radio-collared caribou (remote sensing).

[36] The witness deduced that they had previously flown with the antenna, since on placing the antenna on the counter the pilot had stated that in any case, the officers would not be needing the antenna that day.

[37] According to him, the antenna was connected to the box shown in exhibit M-1E. He confirmed that after consulting exhibit M-3, he noticed no entry for the installation of an antenna between December 4 and 9, 2004. The same was true of exhibit M-4. The applicant's representative, Mr. Jenner, acknowledged there was no entry.

Count 3

[38] Exhibits M-6 and M-7 were filed by the respondent and acknowledged by the applicant's representative. They are the certificate of registration and an airworthiness directive respecting aircraft C-GBKH. The acknowledgment by the applicant's representative confirmed that these documents, in particular exhibit M-7, did indeed pertain to the helicopter in question.

[39] In a case such as the one described in the airworthiness directive (M-7), the aircraft must undergo a 12-hour inspection by a mechanic to detect the presence of any cracks or even, if it is far from its base, a three-hour pilot check. In summer 2004, helicopter C-GBKH was operating at Micoua near Manicouagan, so quite a distance from its base in Alma. It was there continuously until the fall. A three-hour pilot check should therefore have been performed (daily inspection).

[40] The witness Hamel gave the specifics of this three-hour check, referring to page 6 of exhibit M-7. He stressed the fact that item 4 at page 6 states that entries in the aircraft technical log must show that this inspection was indeed performed, which was not the case for the aircraft in question.

[41] The witness made a point of saying that in the past, incidents had occurred regarding this type of inspection and that there had been three accidents (not involving this aircraft type, however), of which at least two had been fatal.

[42] Exhibit M-8, which is the history of the components and replacement parts on helicopter C-GBKH, was acknowledged by the applicant's representative and the witness stated that the item underlined at page 5 of the document is one of the defective parts found on the said aircraft. When he met with the pilots, Mr. Hamel spoke to them about the directive in exhibit M-7, which all but one pilot were aware of and familiar with. Most of the pilots confirmed to Mr. Hamel that they did not systematically follow this directive, at least not rigorously, and that they instead used detergent to see whether there was a crack and did not apply the procedure stipulated in exhibit M-7.

[43] Exhibit M-9 is the log book of aircraft C-GBKH. The witness Hamel met with Steve Michaud, whose signature appears as pilot from August 9 to 12, 2004.

[44] Mr. Hamel questioned the pilot Mr. Michaud about the directive in exhibit M-7. The latter said he did not know about it, that it was not he who had made the entry and that the signature appearing to the right on the first page of exhibit M-9 was not his. Mr. Michaud showed his true signature for the entry made September 11, 2004, which is completely different from the one shown for August 9 to 12 of the same year.

[45] No one else could have had access to the journey log because Mr. Michaud had it in his possession. He did not make the entry regarding the said directive, since he did not know about it.

Counts 4 and 5

[46] Exhibits M-10, M-11 and M-12 concern helicopter C-GBKX and were acknowledged by the applicant's representative.

[47] The witness Hamel showed the inconsistency between exhibits M-11 and M-12. Thus, while document 0371 of exhibit M-12 indicates that the flight of June 9, 2004, was conducted by Mr. Martel, we see that the aircraft journey log (M-11) for that same date shows J. Emmond as the pilot. It is important to point out that it was not the latter who conducted the flight, that it was not he who made the entry in the flight log (M-11) and that his name is written "Émond" and not "Emmond."

[48] One notes similar instances for June 10, 14, 15 and 21-23, 2004. In fact, from the entries in exhibit M-12 it seems it was Mr. Martel who conducted the flights, but the flight log (M-11) shows that it was J. Émond who conducted them.

[49] Exhibit M-13 shows that on June 28-30 and on August 1, 5-9 and 11-15, 2004, the flights were entered as having been conducted by Paul Charest, whereas exhibit M-11 shows that they were conducted by J. Émond, which the latter denies. It should be noted that the weekly report of Paul Charest (M-15) states that he flew helicopter C-GBKX on July 9, whereas the aircraft journey log (M-11) indicates that J. Émond conducted this flight.

[50] In addition, it can be seen in exhibit M-11, at pages 80 to 82, that on August 2, 3, 9-11, 17-19, 23-26, 30 and 31, and on September 1, 2, 7-10, 20-23 and 27, 2004, the flights were conducted by either A. Martel/O. Roy-Bouchard or by J. Émond, whereas exhibit M-15 indicates that it was Mr. Charest who conducted the flights on those dates. These irregularities were acknowledged by the applicant's representative.

[51] Exhibit M-14, the weekly report of pilot Richard Brunet, shows that the flights conducted from September 13 to 16, 2004, were conducted by Mr. Brunet, whereas exhibit M-11, at page 81, shows that the flights were entered in the name of J. Émond on those same dates.

Count 6

[52] Count 6 concerns aircraft C-GBKH (registration in exhibit M-6). The following documents were produced in respect of this offence:

- exhibit M-16, weekly report of Jimmy Émond;
- exhibit M-21, weekly report of Steve Michaud;
- exhibit M-25, weekly report of Anne Thiffault;
- exhibit M-26, flight log of helicopter C-GVED (completes exhibit M-3);
- exhibit M-27, weekly report of Yves Paradis;
- exhibit M-29, flight log of helicopter C-FGAV; and
- exhibit M-30, flight report of Steve Michaud.

[53] The following documents were also produced in support of the analysis of this offence:

- exhibit M-20A, the list of Nav Canada flight information stations;
- exhibit M-20B, the list of aircraft movements for August 15, 2004, at Val-d'Or Airport. This document was obtained by requesting the information from the Val-d'Or manager, who in turn obtained the aircraft movements for code 561 for departures or arrivals ("D" or "A") for a Bell 206 helicopter; and
- exhibit M-20C, the document which states that helicopter C-GBKX went to Sept-Îles on August 27, 2004.

[54] In contrast, for that same helicopter, there is no entry in exhibit M-11 for either August 15, 2004 (Val-d'Or), or August 27, 2004 (Sept-Îles).

[55] Regarding the discrepancies between the entries for air time and flight time, a number of admissions were made. More specifically, the following irregularities were noted:

1. Mr. Michaud: For August 9, 2004, there is a discrepancy between the 7.2 hours logged on helicopter C-GBKH (M-21) and the 6 hours logged on helicopter C-GBKH (M-9). The applicant's representative acknowledged the incorrect entries for the flights of August 10 to 12, 2004.
2. Mr. Martel: In reference to exhibits M-9 and M-12, discrepancies can be seen in the entries for the flights conducted August 16 to 19, 2004, varying from 3 to 7 hours.
3. Mr. Brunet: In reference to exhibits M-9 and M-22, discrepancies can be seen for September 1 and 2, 2004, varying from 0.5 to 4.2 hours.
4. Mr. Émond: In reference to exhibits M-9 and M-16, discrepancies in entries varying from 3 to 5.6 hours can be seen for October 7, 2004.

Count 7

[56] Referring to exhibits M-9 and M-16, exhibit M-16 shows hours entered for October 24 and November 10, 2004, whereas exhibit M-9 shows no entries; they should match.

[57] Regarding the missing entries in respect of helicopter C-GBKX alleged in count 5, entries were made in exhibit M-16 on June 13, 20 and 27, July 4 and 18, August 22 and 27-29, 2004, whereas none were made in exhibit M-11. These omissions and/or discrepancies were acknowledged by the applicant's representative.

[58] The same is true in respect of Mr. Charest regarding count 5 in that there is an entry on August 12, 2004, of 3.3 hours in exhibit M-15 and nothing in exhibit M-11.

Count 9

[59] Count 9 concerns helicopter C-GHJG. The respondent produced in this regard exhibit M-24, the aircraft journey log, and exhibit M-18, an invoice from Air Bellevue inc. dated July 31, 2004.

[60] The witness Hamel stated that the flight log (M-24) showed that on July 31, 2004, the aircraft went from Alma to Micoua, whereas in fact the evidence shows that the helicopter was at Roberval that day to conduct sightseeing flights during the Traversée Internationale du Lac Saint-Jean.

[61] It has been acknowledged that there were no flight entries between October 22 and 28, 2004, since at that time, the aircraft was undergoing repairs. However, exhibit M-25 shows an entry of 3.5 hours for this aircraft on October 23, 2004.

[62] The witness stated that most of the unlogged flights were primarily "non-income-producing" flights. Thus, for the contract in Micoua, the Alma-Micoua flights for aircraft maintenance were non-paying and the instruction was that they not be logged

[63] Also, a number of flights were paid for in cash and helicopter excursions were not entered or fully entered, and neither were what are commonly referred to as pad rides.

[64] For example, Mr. Émond stated that Pierre Robert, the owner of helicopter C-GBKX, was a passenger on the flight to Sept-Îles on August 27, 2004 (M-20C); however, Mr. Robert returned to Alma alone with the aircraft. The witness Hamel did not know where the latter had gone with the aircraft.

Count 8

[65] Count 8 concerns the excessive differences between the air time and the flight time on helicopter C-GHJG.

[66] Thus, on July 12, 2004, it can be seen that the number of hours shown in exhibit M-12 is eight, whereas in exhibit M-24, the number of hours is four. Witness Hamel confirmed that he was interested mainly in those cases where the difference was two hours or more, therefore probably indicating an irregularity.

[67] On July 13, 2004, there was a difference of more than three hours between exhibits M-12 and M-24. On July 14, 2004, a difference of 0.9 hours, on July 15, 2004, a difference of 2.7 hours, on August 23, 2004, a difference of 1.9 hours.

Count 10

[68] This is a similar offence concerning helicopter C-GVED for September 1 and 4, 2004, as exhibits M-26 and M-27 show, for a notable discrepancy in entries involving Mr. Martel, among others.

Count 11

[69] This concerns helicopter C-FGAV. According to exhibits M-12 and M-29, flights were conducted by a pilot other than the one whose name was entered, two signatures were forged, and for four flights, there was a significant difference between the air time and the flight time.

[70] Thus, on comparing the flight record of aircraft C-FGAV (M-29) and Mr. Martel's flight report (M-12), it can be seen that on June 16 and 17, 2004, Mr. Émond's name is entered in exhibit M-29, whereas, according to exhibit M-12, Mr. Martel conducted the flight.

[71] In exhibits M-21 and M-29 regarding Mr. Michaud, it can be seen that on July 9 and 10 and August 2, 2004, Mr. Michaud's name appears, but it is overwritten by that of a Mr. Potvin, whom Mr. Michaud said he did not know.

[72] Also, Mr. Émond's flight log (M-17) shows that on August 8, 2004, the aircraft in question flew 3.5 hours at the Dolbeau blueberry festival, whereas exhibit M-29 shows a time of 0.9 hours (Alma-Micoua) for that same date.

[73] In exhibit M-16, Mr. Émond's name appears as the one who flew 2.6 hours on helicopter C-GBKX on August 29, 2004, whereas exhibit M-17 indicates that he flew helicopter C-GBKX for 4.5 hours. In addition, in exhibit M-29, his name appears as the pilot of helicopter C-FGAV for 1.1 hours.

Count 12

[74] This count concerns 16 series of flights for which the air times and the cumulative total air time were not entered in the journey log of helicopter C-FGAV. The evidence reveals the following facts according to exhibits M-21 and M-29.

[75] In exhibit M-21, Mr. Michaud's name appears as pilot on June 21, 2004, whereas in exhibit M-29, the names of Messrs. Michaud, Martel and Barrette are entered. The explanation given was that Mr. Martel was training Mr. Barrette and that the training report could not have been done at Alma since the helicopter was at Micoua.

[76] Similar irregularities are noted for the period July 11 to 15, 2004, for a total of 39.3 hours, which are entered in exhibit M-21 but are not found in exhibit M-29.

[77] According to the witness, going by the documentation, had the 39.3 hours been entered in exhibit M-29, aircraft C-FGAV would have exceeded its 100 hours and an inspection would then have been necessary.

[78] It can also be seen that for July 24, 30 and 31, August 1 and 7, and September 12, 2004, none of these flights appears in Exhibit M-29, even though they were conducted by Mr. Émond, as exhibit M-16 attests. Witness Hamel thinks these were helicopter excursions during various festivals in the region.

[79] For the same helicopter, on September 26, 2004, a time of 1.1 hours was entered in exhibit M-16, but there is no entry in exhibit M-29.

[80] The cross-examination was fairly brief and concerned only details that have no bearing on the determination to be made.

(3) Steve Michaud

[81] Pilot Michaud testified next. He took his pilot training 18 years ago, has accumulated 1 100 pilot hours and flew for the applicant from June 2004 to June 2005. He also acknowledged having operated helicopter C-GBKH. He was aware that there was an airworthiness directive in respect of the aircraft, but at the time he was hired he was not aware of the directive (M-7) concerning the need to perform certain work.

[82] Regarding the log book of helicopter C-GBKH (M-9), he stated that he had made neither the entries nor the inspections shown for the period August 9 to 12, 2004. The reason was simple; he had not had the log book with him and was not aware of the entries that needed to be made. Besides, the log book was in Alma because the helicopter had just been purchased.

[83] He acknowledged that this document was always to be kept on board the aircraft when it was more than 15 miles from its base or when it touched down elsewhere; however, the helicopter was in the north (Micoua). Also, he first flew on board that aircraft on August 1, 2004.

[84] In exhibit M-21, he recognized his signature and his writing for July 9 and 10, 2004. However, he said that the signature and the writing appearing for the same dates in exhibit M-29 were not his, his last entry in exhibit M-29 having been made July 8, 2004.

[85] In exhibit M-9, regarding helicopter C-GBKH, he stated that the entries made from August 9 to 12, 2004, and the signature were not his. Regarding helicopter C-FGAV, in reference to exhibits M-21 and M-29 for August 2, 2004, he stated that he made the entry of six hours in exhibit M-29, but not that of 8.6 hours in exhibit M-21. He said he did not know why there was a discrepancy.

Count 13

[86] Over the period July 5 to 12, 2004, Mr. Michaud said that helicopter C-FGAV had had a by-pass problem while it was in Micoua. He described how there is a filter between the oil tank and the engine and that a by-pass system takes over when the filter becomes blocked. When that occurs, a red button automatically lights up on the instrument panel. According to the instructions, the aircraft is to be shut down when the problem occurs a second time, and doing what is called a reset is forbidden.

[87] He acknowledged having continued to operate the helicopter the entire week after the above-mentioned problem occurred a second time and that a mechanic should have changed or cleaned the filter. Mr. Martel, president, operations manager and chief pilot, was on site. He knew of the problem and knew that the helicopter was continuing to fly without the necessary corrective action having been taken. In fact, Mr. Martel had told him he was to finish up the week. He was present during both occurrences, since he was acting as dispatcher.

[88] The procedure to be followed in such a situation is generally to report the malfunction and enter it in the journey log, which Mr. Michaud did not do because it would have been necessary to ground the helicopter immediately and not fly it again until the problem was rectified.

[89] Mr. Martel told him it was imperative to continue on. Mr. Michaud asserted that had he entered the malfunction in the journey log, when the plan was to continue operating the aircraft, and not taken the corrective action until later, he would definitely have lost his job with Hélicoptères Panorama Ltée.

[90] He acknowledged, however, that in some circumstances, a mechanic could have instructed someone over the telephone to return the helicopter to base despite the two malfunctions.

Count 14

[91] Witness Michaud, who flew helicopter C-GBKH during the period August 14 to 28, 2004, acknowledged that the aircraft had experienced a compressor stall and that he had not entered this in the journey log. In fact, as he was taking off from the work site with passengers, there was a lack of air to the compressor, causing some noise and an increase in the engine rev. He therefore touched down, deplaned the passengers and returned the helicopter to Manic 3, where he informed his employer of what had happened; Mr. Martel was present. In such a case, the normal procedure is to check the engine parameters and conduct tests, but only a mechanic can perform this work. The log book should show the occurrence, the result of the post-repair inspection and the measures taken.

[92] The pilot Mr. Michaud also testified about counts 1 and 2 concerning the installation of animal telemetry systems. He stated that if it was for an approved system, the installation had to be covered by an STC and entered in the journey log.

[93] Mr. Michaud was then immediately cross-examined about the events described in counts 13 and 14. He confirmed that helicopter C-FGAV had continued to be flown for several days, despite the by-pass malfunction, before the helicopter returned to Alma.

[94] He stated that he had accumulated 1 200 pilot hours on this type of helicopter. Although he recognized he was not taking a huge risk in continuing to fly, he had nevertheless taken special precautions. He said he was concerned and would have stopped immediately if at any time he had thought the risk was too high.

[95] Regarding the compressor stall, he checked the parameters, noted them and reported his findings to the Alma base. After this occurrence and after completing his inspection, he continued to fly for four days and to carry passengers. He could not say what the degree of risk was to the passengers.

[96] Mr. Michaud thought that the helicopter had a problem and [translation] "that something *unsafe* was added to the *introaction*". He hesitated to say whether the level of safety was acceptable, but confirmed that he had subsequently left his job at Hélicoptères Panorama Ltée and had been disappointed and disillusioned.

[97] On being questioned again by Mr. Paré, he said he had been chief pilot in spring 2005 and had left in June of the same year. He had known Mr. Martel since becoming a pilot; they were friends. Mr. Martel was his employer and, according to Mr. Michaud, [translation] "changes were to come; things were to be done more according to the law . . . soon . . . and soon did not come quickly enough". The witness had run out of patience.

(4) Paul Charest

[98] Although Mr. Charest was not included on the list of witnesses, and despite an objection in this regard, the member allowed the examination of Mr. Charest, a pilot whose name had been mentioned a number of times.

[99] I will not go over his entire testimony. It should be noted, however, that he confirmed, with regard to exhibits M-11 and M-13, that he had indeed conducted the 39 flights, but that at the express request of Mr. Martel, Mr. Émond had entered them in his flight log book to increase his number of hours.

[100] He also confirmed, with regard to count 5, that he had indeed flown helicopter C-GBKX to Micoua and that the flight had not been logged in exhibit M-11. He also confirmed the compressor stall occurrence at Micoua on August 14, 2004, which was not entered in the flight log, as it should have been.

(5) Jimmy Émond

[101] Mr. Émond was the next witness. He was hired in May 2004 after his training at the Cégep de Chicoutimi.

[102] Regarding count 4 and exhibits M-11, M-12 and M-17, he acknowledged that exhibit M-11 referred to numerous flights made by him, whereas they had been made in part by Messrs. Martel, Charest and Brunet.

[103] He also confirmed that his name and signature appeared in exhibit M-11 for the flights of June 9, 14, 15 and 21-23, 2004, on board helicopter C-GBKX, but that it was not he who had made the entries.

[104] Referring to exhibit M-12 for June 9, 2004, Mr. Martel was at the controls of helicopter C-GBKX from Alma to Micoua and Mr. Émond was with him. The previous day, Mr. Émond had undergone his pilot proficiency check with Mr. Turcotte and Mr. Martel had continued his day, although he himself had flown just one hour of the 4.5 hours and all 4.5 hours had been attributed to him.

[105] The same was true for June 10, 2004; he confirmed the incorrect names in exhibits M-11, M-12 and M-17. The applicant's representative, moreover, accepted the testimony on this point.

(6) Richard Brunet

[106] The pilot Mr. Brunet also confirmed what had already been related by the principal witness with regard to exhibits M-11, M-14 and M-17 concerning the flights conducted by Mr. Brunet, though it is Mr. Émond's name that appears, especially for the period September 14 to 16, 2004, for the respective times of 4.7, 5.4, 5.9, 6.2 and 7.9 hours. Mr. Martel was aware of this, since he had had him sign the aircraft journey log.

[107] Regarding the flying time not entered, according to count 5, he confirmed the information in exhibits M-11 and M-16. According to him, these were unpaid transitional flights and ferry flights. The Alma-Sept-Îles return trip was about five hours.

[108] Regarding count 7, he acknowledged that hours had not been entered in exhibit M-9.

[109] Regarding count 12, for helicopter C-FGAV, he acknowledged that hours had not been entered for a series of dates that had already been proven and were not entered in either exhibit M-16 or exhibit M-29. Here again, he said these were ferry flights or non-revenue-producing flights.

B. Evidence of the Applicant

[110] First, the applicant produced, as exhibit D-1, an order form from Hélicoptères Panorama Ltée to Aerospace Products International for clamps used to fasten various instruments to aircraft, which are approved by Transport Canada. This order is dated July 12, 2005.

[111] The applicant also filed, as exhibit D-2, a document concerning an exemption from the application of sections 605.03(1)(b) and 703.25 of the CARs. The purpose of this exemption is to enable air operators to carry external loads on aircraft fitted with floats without an authorization and, where external loads are authorized, without having to meet the conditions set out in the flight authority in respect of the aircraft.

[112] The applicant also argued, without further evidence, that it had asked that counts 1, 2, 4, 8, 10 and 11 be rejected because the terms "performed", "made" or "failed to" were used, whereas Hélicoptères Panorama Ltée is a corporation, and cannot physically make or perform something.

[113] As for counts 5, 7, 9 and 12, these were not properly written up.

III. ARGUMENTS

A. Evidence of the Respondent

[114] The Minister's representative claimed that Hélicoptères Panorama Ltée had permitted each of the offences set out in counts 1 to 14, summarizing the evidence as follows:

- count 1: airworthiness directive stipulated in section 593.01 not followed; emergency installation not approved and not in accordance with the standards;
- count 2: no entry in the aircraft log book;
- count 3: evidence of eight take-offs, rather than 88, established by the witnesses Thibodeau, Hamel and Michaud;
- count 4: inaccurate entries established by the witnesses Hamel, Émond, Charest and Brunet;
- count 5: absence of journey log entries confirmed by the witnesses Hamel, Charest and Émond;
- count 6: inaccurate entries and forged signatures established by Messrs. Émond and Michaud, to wit, four forged signatures and eight incorrect times (exceeding actual flight time);
- count 7: time not entered (forgotten by the pilot and not verified by the employer);
- count 8: error in entering excessive flight time and air time;
- count 9: air time not entered;
- count 10: excessive difference between air time and flight time;
- count 11: incorrect designation of the pilot entered and discrepancy in times;
- count 12: unlogged series of flights confirmed by pilots Hamel, Michaud and Émond;
- count 13: unreported by-pass problem and irregular flights; and
- count 14: compressor stall occurrence without following proper procedures.

[115] As this is a first offence, the sanction sought is the minimum so that the applicant can mend its ways and comply with the regulations in future.

[116] Also, the Minister's representative stressed the importance of safety, the fact that the pilots were not comfortable with the situation, the fact that Hélicoptères Panorama Ltée knew

that offences were being committed and that most had been acknowledged. There is therefore good reason to confirm all the charges against the company.

B. Arguments of the Applicant

[117] Mr. Jenner stated that the charges were vague and that exhibit D-2 contained an exemption, although it seems to apply only to aircraft fitted with floats.

[118] According to the applicant, there was no evidence that the antenna is a part and that there was a lack of maintenance. He claimed that it was not up to the applicant to show whether there was an external load within the meaning of section 702.45 of the CARs. While the installation must be certified, section 702.45 of the CARs pertains and applies solely to aerial work and it is section 703.25 that should apply.

[119] The comments of the case presenting officer with respect to counts 2-10 and 12 are not very conclusive since, when there is a discrepancy between two entries, it is necessary to show which one is erroneous.

IV. ANALYSIS

[120] It is important to keep in mind that the evidence is abundant regarding inaccurate or unmade entries, whether deliberate or not, the exchange of flying times, the lack of consistency between entries in the volumes or required log books, be they aircraft log books, technical records, flight logs for each pilot. In a word, and as the Minister's representative recalled, it was the most frequent or serious offences that were addressed.

[121] The member therefore accepts that abundant evidence has been adduced, that these errors were indeed made and most were made to the knowledge, in full view of and with the direct acquiescence of the applicant and its representative, Mr. Martel.

[122] The applicant first claimed that the charges were vague, but one wonders why most of them were admitted to or why the pilots were asked very few questions. No witness was called to explain in what way the counts were unclear, thus preventing the applicant from preparing properly. Moreover, the applicant raised this argument invoking the *audi alteram partem* ("hear the other side") rule. The member agrees entirely with the application of this adage, but we would have to have heard the other side.

[123] It then claimed that some counts were not properly written up, making them impossible to understand. However, during testimony or arguments it was not explained to the member in what way these counts were improperly written up.

[124] With regard to certain counts, it is claimed that the terms "performed," "made" or "failed to" cannot be applied to a corporation. The member has difficulty accepting this argument since the generic terms used in the *Civil Code of Quebec* regarding the principal-agent relationship apply, in my view, to the field of transport.

[125] It is presumed that the employer was aware of the majority of the offences, since it was responsible for its own log books, particularly as certain offences were committed at the recommendation, or at least with the knowledge, of the applicant's president and operations manager. Thus, certain entries of hours for one pilot when the flights had been conducted by another were made at Mr. Martel's express request.

[126] The two occurrences referred to in counts 13 and 14 took place in the presence of Mr. Martel, who said the week had to be finished up. This evidence is so compelling that one of the pilots believed that had he logged the malfunction, thereby forcing the grounding of the aircraft, he would likely have lost his job with the applicant.

[127] The member reiterates that the applicant's submissions would have to have been heard for the elements raised by its representative to be accepted.

[128] The member cannot accept the comparison with *Mirabel Aero Service v. Canada (Minister of Transport)*, [2000], appeal determination, CAT file no. O-1860-41, [2000] C.A.T.D. no. 38 (QL). In that case, there was a lack of information as to the subject of the Minister's allegation and the ambiguity of the disclosure made it unclear what evidence the Minister proposed to adduce and did not provide a clear and complete idea of the contravention to which the notice of assessment pertained so that anyone could know what had to be proven and refuted or rectify the wrong committed. This is not the case here.

[129] As to the complexity of the CARs, there is no doubt and the member fully agrees that they may be ambiguous. However, there would have to have been ambiguity and the applicant would have to have been wronged and the witnesses would have to have been inconsistent with regard to their interpretation to be given them.

[130] In *Canada (Minister of Transport) v. Palley*, [2003], review determination, CAT file no. P-2613-33, [2003] C.A.T.D. no. 18 (QL), it is quite clear that the witnesses presented conflicting views and that an error was made in the notice given by people in authority, which could cause a problem for the pilots or the owner of a company such as that of the applicant. But this is not the case here, since no testimonial evidence has been adduced to this effect, nor has evidence of the ambiguity of the information.

V. DETERMINATION

[131] For all these reasons, I uphold the Minister's decision and the amount of the monetary penalties assessed.

December 29, 2006

Michel G. Boulianne
Member