

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport, Applicant**

- and -

**Aviation Portneuf, Respondent**

**LEGISLATION:**

*Air Regulations, C.R.C. 1978, c. 2, s. 804*

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**Review Determination  
Michel Larose**

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**Decision: December 4, 1990**

TRANSLATION

**Heard:** Québec, Quebec, November 21, 1990

*The Minister of Transport's decision to assess a penalty of \$250 on Aviation Portneuf on July 24, 1990, is confirmed. A cheque for this amount payable to the Receiver General for Canada is to be sent within 30 days of receipt of my decision to:*

*Civil Aviation Tribunal  
344 Slater Street, Room 405  
Ottawa, Ontario K1A 0N5*

DOCUMENTS AND TESTIMONY

During the first part of the hearing Mr. Bourgoûin, Presenter for Transport Canada, filed with the member exhibits M-1 to M-4, consisting of two *Air Regulations* and two *Air Navigation Orders*.

Exhibit M-1 was section 804 of the *Air Regulations*, which reads as follows: "No person shall take off from or land at an aerodrome at night with an aircraft unless the aerodrome is lighted as prescribed pursuant to section 311".

Exhibit M-2 was section 311 of the *Air Regulations*, which reads as follows:

The Minister may make directions

- (a) prescribing the marks and lights to be displayed by day and by night at any aerodrome;
- (b) prescribing or approving the fees that may be charged for the use of any airport or its facilities; and
- (c) prescribing such other conditions as he deems necessary respecting the operation of any aerodrome.

Exhibit M-3 was *Air Navigation Order, Series III, No. 2, Aerodrome Minimum Lighting Order*, section 2, which reads as follows: "In this order, 'light' means a point source of light radiation"; and section 3(2) which reads as follows:

The fixed white lights referred to in paragraph (1)(b) shall be arranged in such a manner that

- (a) the distance between the parallel lines of light is not more than 200 feet and not less than 75 feet;
- (b) the distance between the lights in each parallel line of lights is not more than 200 feet;
- (c) each parallel line of lights is not less than 1,400 feet in length and consists of at least eight lights; and
- (d) each light in one parallel line of lights is situated opposite a light in the other parallel line of lights, each such light being at right angles to the axis of the take-off and landing area.

Exhibit M-4 was an *Air Navigation Order* in which the term "night" is defined as follows: "'night' means, in respect of any place in Canada, the period of time when the centre of the sun's disc is more than 60 below the horizon and, in any place where the sun rises and sets daily, may be considered to be the period of time commencing 1/2 hour after sunset and ending 1/2 hour before sunrise". I would also point out that the half hour following sunset is called official dusk.

The first witness, Mr. Charles McDonald, Manager, Flight Service Station, Quebec Airport, was then called, and he testified to the Tribunal that on September 12, 1989, official night occurred at 23:04 hours (Universal Time Coordinate), and dusk, that is, the half hour following, at 23:34 hours (Universal Time Coordinate). The local time was calculated by subtracting four hours from the Universal Time Coordinate time to get Eastern Daylight Saving Time, which gave 19:04 hours and 19:34 hours. In support of his testimony, Mr. McDonald filed the official document identified as Exhibit M-5.

The second witness, Mr. Alexandre Leclerc, the complainant, a business consultant and resident of Lac Sept-Iles, filed, as Exhibit M-6, a bathymetric chart of Lac Sept-Iles and testified to the Tribunal that on September 12, 1989, he was on the west part of Lac Sept-Iles at his residence at or about 19:50 hours and heard an aircraft coming from the north. He became very worried because his daughter's boat was not at the dock. The aircraft was flying north-south passing over the west part of the lake. His own cottage is located about 10 cottages south of the Aviation Portneuf base. The winds were calm during the day, blowing from the west-northwest with a maximum force of seven.

Mr. Leclerc changed the cardinal points on Exhibit M-6, a bathymetric chart of Lac Sept-Iles, by bringing the north left of where it was inscribed and displacing the other three cardinal points. He told the Tribunal member that the landing had been made differently, that is, in a different direction from that stated by Mr. Alexandre Leclerc.

In the second part of the hearing, Mr. Serge Leclerc testified to the Tribunal member that he was present at the Aviation Portneuf base on September 12, 1989, because he was the dispatcher at the time, and, according to him, the time was in fact 19:35 hours. Mr. Leclerc added that Mr. Gilles Drolet, the pilot, could no longer be reached and that the other person aboard the aircraft on September 12, 1989, was a woman, Mrs. Murielle Dion, his sister-in-law, and that she could not come to the hearing on November 21, 1990. Mr. Leclerc deplored the fact that he could be assessed a penalty on a mere declaration, and he told the member that there had been a long-standing dispute between the lakefront property owners and Aviation Portneuf; the property owners had been fighting Aviation Portneuf for at least 10 years to get it to cease operations on Lac Sept-Iles.

Under cross-examination, Mr. Bourguin of Transport Canada told the member that no complaint had been made against Aviation Portneuf with malice, and that, to the best of his knowledge, this was the first that had come before the Civil Aviation Tribunal.

In final argument, Mr. Serge Leclerc said that the time recorded in the logbook for September 12, 1989, was correct, namely 19:10 hours to 19:35 hours, that the landing had been made in an entirely different direction from that stated by Mr. Alexandre Leclerc, the complainant, and that he did not want to be assessed a penalty as a result of the misunderstanding that existed between Aviation Portneuf and the lakefront property owners of Lac Sept-Iles.

Mr. Bourguin of Transport Canada, for his part, said that the complaint had not been made out of malice; the citizen, Mr. Alexandre Leclerc, was extremely worried about his daughter being on the lake when it was dark, and that safety should always be respected, especially by commercial airlines.

## CONCLUSION

The penalty of \$250 assessed by Transport Canada against Aviation Portneuf on July 24, 1990, pursuant to section 7.7 of the *Aeronautics Act* is fully justified; the Minister of Transport decided to assess the penalty against Aviation Portneuf because the company contravened section 804 of the *Air Regulations* when, on September 12, 1989, the beaver DHC-2 aircraft, registration

CFM XR, piloted by Mr. Gilles Drolet, landed on Lac Sept-Iles during the period of official night while the lake was not lighted in accordance with *Air Navigation Order*, Series III, No. 2 (referring to section 311 of the *Air Regulations*).

First, Exhibit M-5 states that sunset on September 12, 1989, occurred at 23:04 hours, and official dusk, i.e., night half an hour later, at 23:34 hours, in Eastern Daylight Saving Time 19:04 hours and 19:34 hours. In the same vein, the logbook, Exhibit M-8, states that the takeoff was made at 19:10 hours, although official dusk had already occurred at 19:34 hours (night).

Second, in the course of the hearing, the pilot and the passenger did not come to testify to contradict the times stated by Transport Canada, and, to my mind, that fact is decisive in assessing the evidence submitted by the Respondent.

Lastly, as a member of the Civil Aviation Tribunal, I cannot help but subscribe to the thesis that the greatest safety must always prevail in the movements of aircraft, and especially over lakes where a seaplane lands when pleasure boaters may be out on it and dusk has already fallen.