

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Appellant

- and -

Denis Vincent, Respondent

LEGISLATION:

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

Canadian Aviation Regulations, s. 602.13(1)

Take off, Policy Letter, Landing, Helicopter, Expert Witness, Built up area

Appeal decision

Faye H. Smith, Michel G. Boulianne, Suzanne Racine

Decision: September 24, 2003

TRANSLATION

The Appeal Panel upholds the review determination. Mr. Vincent was not authorized to conduct an approach, landing or take-off within the built-up area of this settlement since this built-up area comes within the prohibition in the English version of subsection 602.13(1) of the Canadian Aviation Regulations. The monetary penalty of \$250.00 is payable to the Receiver General for Canada and must be received by the Tribunal within fifteen days of service of this decision.

An appeal hearing on the above matter was held before three members of the Tribunal on Tuesday, June 10, 2003, at the Federal Court of Canada in Quebec City, Quebec.

BACKGROUND

The Minister of Transport alleged that Mr. Denis Vincent contravened subsection 602.13(1) of the *Canadian Aviation Regulations* (CARs) by conducting, on August 21, 2001, at about 20:00 hours (local time), and on August 22, 2001, at about 03:00 hours (local time), an approach, landing and take-off on board the Bell 206 aircraft bearing registration marks N2110P. These

manoeuvres were executed within a built-up area at or near 1230 Ste-Marguerite, Pointe-du-Lac, Quebec, and not at an airport or a military aerodrome.

On May 13, 2002, the Minister assessed a monetary penalty of \$250 against Mr. Vincent.

As the penalty was not paid within the prescribed time limit (on or before June 17, 2002), a Review Hearing was held on November 8, 2002, at Trois-Rivières before hearing officer Ms. Carole Anne Soucy.

The Appellant, Mr. Vincent, is appealing Ms. Soucy's determination of March 25, 2003, which confirmed the Minister's decision and the monetary penalty of \$250.

GROUND OF APPEAL

The Appellant maintains that the Member erred in law in her interpretation of subsection 602.13(1) of the CARs in concluding that the manoeuvres conducted on August 21 and 22, 2001, were executed within a built-up area of a city or town.

ARGUMENTS OF THE APPELLANT

1. The Minister adduced no evidence to the effect that the approach, landing and take-off of the aircraft flown by the Appellant were conducted in a "city or town" within the meaning of subsection 602.13(1) of the CARs, other than a document indicating that Pointe-du-Lac is within a regional county municipality (MRC).

2. The Member erred in law in likening the notion of "municipality" to the **city or town** parameters referred to in subsection 602.13(1) of the CARs.

3. Paragraph 534(2)(a) of the *Air Regulations*, replaced in 1996 by subsection 602.13(1) of the CARs, prohibited any person operating an aircraft from taking off, landing or attempting to land over a city, town or **other settlements** (agglomérations urbaines, villageoises ou autres), except in the cases set out in subsections (4), (5) and (6) or pursuant to an authorization issued by the Minister. The Appellant submits that the expression "**other settlements**" in paragraph 534(2)(a) referred to any built-up area, regardless of the form of municipal structure in question. Paragraph 534(2)(a) was therefore broader and more general in scope than the "**city or town**" parameters referred to in subsection 602.13(1) of the CARs.

The legislator's present intent, according to the Appellant, is far more specific, since subsection 602.13(1) refers only to a prohibition of conducting an approach, take-off or landing within a built-up area of a city (ville) or town (village). The legislator thus wanted to restrict the application of this subsection to settlements larger than that of Pointe-du-Lac where the Appellant conducted his approach, landing and take-off.

The Member erroneously interpreted the present intent of the legislator in likening the term **municipality** to the **city or town** parameters of subsection 602.13(1).

4. The notion of **city or town** referred to in subsection 602.13(1) of the CARs is to be given the interpretation that is most fair, while being compatible with the attainment of its purpose, namely, to ensure aviation safety.^[1]

5. The wording of subsection 602.13(1) of the CARs is clear and does not give rise to interpretation. The prohibition of conducting an approach, landing or take-off within a built-up area refers to the built-up area of a city or town. To submit that all cities and towns are municipalities is an aberration since, according to the Appellant, 90% of Quebec's territory is municipalized, and therefore it would virtually be prohibited for anyone to land or take off elsewhere than at a certified airport or a military aerodrome. According to the Appellant, this does not express the obvious intent of the legislator behind the present subsection 602.13(1) of the CARs.

ARGUMENTS OF THE MINISTER

1. The Minister's representative argues that the findings of fact and credibility that enabled the Member to determine that the region where the incidents of August 21 and 22, 2001 occurred is within the city or town parameters of subsection 603.12(1) of the CARs, are reasonable. They are set out in the following evidentiary elements filed in the case, namely:

- Testimony of Mr. Thibodeau, p. 124 of the transcript;
- Exhibit M-7 , zoning document of the Municipality of Pointe-du-Lac, p. 105 of the transcript;
- Exhibit M-10 , letter of Ms. Dupont, pp.124-125 of the transcript;
- Exhibit M-12 , map of the Trois-Rivières region, p. 150 of the transcript;

2. Findings of fact and credibility must not be overturned unless they are unreasonable.^[2]

3. Every enactment must be given a large and liberal interpretation^[3] and its words are to be read in their entire context and in their grammatical and ordinary sense and harmonious with the scheme and the purpose of the Act, and the intention of the legislator.^[4] The purpose of the *Aeronautics Act* and of the CARs is to protect travellers and ensure that pilots and air carriers operate safely.^[5] The Member's proposed interpretation of the term "**town**" in subsection 602.13(1) of the CARs is along these lines.

GROUNDS

It is important, first and foremost, to say that the sole ground of appeal concerns the interpretation of the notions of "**city or town**" contained in the expression "within a built-up area of a city or town" in subsection 602.13(1) of the CARs. The interpretation of the notion of "built-up area," referring to constructions, structures, buildings erected or built by man, on which the Member based her determination in first instance, is not the subject of a ground of appeal.

The Panel must therefore rule on the following matter:

In conducting his approach, landing and take-off within a built-up area at or near 1230 Ste-Marguerite, Pointe-du-Lac, Quebec, on August 21 and 22, 2001, did Mr. Vincent execute these manoeuvres within a **city** or **town** within the meaning of subsection 602.13(1) of the CARs? Did the Member at first instance err in law in finding that the **city** and **town** parameters stipulated in subsection 602.13(1) of the CARs encompassed that of municipality given their similar structures?

First of all, a verification of a listing of municipalities confirms that, at the time of the alleged offence, Pointe-du-Lac bore the designation "*Municipalité de Pointe-du-Lac*." Since January 1, 2002, the present jurisdiction of the former municipality of Pointe-du-Lac has become part of the City of Trois-Rivières^[6] in the context of the municipal restructuring instituted by Quebec's *ministre des Affaires municipales et de la Métropole*.

Secondly, there is reason to wonder whether subsection 602.13(1) of the CARs is not open to interpretation with respect to its notion of "*ville et village*" within the meaning of the French text, and that of "city or town" in its English version. The English text of subsection 602.13(1) of the CARs translates "*ville*" by "City" and "*village*" by "Town." According to the Appellant, the term "Town" refers to a built-up area larger than a village, such that the prohibition of subsection 602.13(1) of the CARs would not apply to the former municipality of Pointe-du-Lac.

The issue is therefore whether the former **municipality** of Pointe-du-Lac is a "*ville ou un village*" within the meaning of the French text, or a "**city or town**" within the meaning of the English text of subsection 602.13(1) of the CARs.

The *Commission de toponymie du Québec* defines the term "*ville*" as "[a]gglomération plus ou moins importante, caractérisée par un habitat concentré dont les activités sont axées sur **l'industrie, le commerce, les services et l'administration** [a settlement of some magnitude characterized by a concentration of dwellings, where activities are based on **industry, business, services and administration**]"; while "*village*" is defined as "[a]gglomération rurale caractérisée par un habitat plus ou moins concentré, possédant des services de première nécessité et offrant une forme de vie communautaire [a rural settlement characterized by a lesser concentration of dwellings, offering basic services and a measure of community life.]"

The *Petit Robert* defines "*ville*" as "[m]ilieu géographique et social formé par une réunion organique et relativement considérable de constructions et dont les habitants travaillent, pour la plupart, à l'intérieur de l'agglomération, au commerce, à l'industrie, à l'administration, [a geographical and social environment formed by a relatively substantial complex of buildings, most of whose inhabitants work in commercial, industrial or administrative jobs within its boundaries]" and defines "*village*" as "[a]gglomération rurale: groupe d'habitations assez important pour avoir une vie propre (à différence du hameau) [a rural settlement; a group of dwellings large enough to have a life of its own (in contrast to a hamlet)]."

The *Canadian Oxford Dictionary* defines "city" as "a municipality with a large population or area or combination of the two," and "town" as "an urban area with a name, defined boundaries, and local government, **usually larger than a village and smaller than a city.**"

This latter definition becomes more clear on consulting the term "village." The *Canadian Oxford Dictionary* defines the English term "village" as "a group of houses and associated buildings, larger than a hamlet and smaller than a town, especially in a rural area."

We note that the definition of the term "*village*" used in the French text to translate the notion of "town" in the English version of subsection 602.13(1) of the CARs is more restrictive. In fact, a person who consults the French version of subsection 602.13(1) of the CARs is prevented, for all practical purposes, from conducting an approach, landing or take-off within a greater number of built-up areas than the person who consults it in English. The terms "*ville et village*" of the French text cover more territory than the terms "city and town" of the English version, since the latter terms exclude the notion of "village."^[7]

To show the legislator's intent, the Appellant's representative reminded the Panel that former paragraph 534(2)(a) of the *Air Regulations*, since replaced by the present subsection 602.13(1) of the CARs, prohibited any take-off, landing and attempted landing not only in a city or town, but also in all "other settlements." The word "*autres*" of the French text of this former section refers to the term "other settlements" in the English text. The abandonment of the term "*autres*" has rendered the present 602.13(1) regulation less restrictive by excluding those other forms of municipal structure that are not *villes* (cities) or *villages* (towns) from its application.

Exhibit M-7, which is the zoning plan for the former municipality of Pointe-du-Lac (also forming part of the regional county municipality of Francheville), shows that the place of the alleged offence was in zone IC-01 of the said plan. This zone permits the presence of dwellings (single-family, semi-detached or two-family), various businesses for retail sales or services serving the local community, businesses for retail or wholesale sales and services serving the region, as well as certain industrial, manufacturing or recreational uses.

Exhibit M-10 shows us that 1230 Ste-Marguerite, the place of the alleged offence, is within the urban perimeter of the municipality, alongside the railway line and adjacent to commercial and residential zones and a short distance from the agricultural zone. The documentary and testimonial evidence entered into the record attests to this.

The settlement of the former municipality of Pointe-du-Lac is more akin to a "town" according to the evidence filed in the case, smaller than a "*ville*" ("city") while larger than a "*village*." It identifies itself as an urban, rather than a rural jurisdiction. It is in fact a built-up area of some size, with its own mayor, councillors, a headquarters, an office of the secretary-treasurer, a fire department, a recreation department, a public works department and municipal inspection station, and an advisory planning committee.

Moreover, the Commission de toponymie du Québec defines the term "*municipalité*" (in English, "municipality") as "[t]erritoire sur lequel s'exerce un gouvernement local conformément aux lois municipales." According to the Commission, a "*ville*" is considered to be a municipality erected as such in accordance with the provisions of the *Cities and Towns Act*. Moreover, the *Canadian Oxford Dictionary* defines "municipality" as "a city, town or district having local government."

The English definition of the term "municipality" is somewhat more specific than the French definition. It covers, specifically, the "city or town" parameters of the English version of subsection 602.13(1) of the CARs. Thus, the term "municipality" (or "*municipalité*") is appropriate only for larger settlements (cities) or settlements smaller than a city but larger than the "*village*" of the French text (towns). Only the French notion of "*ville*" (whose jurisdiction is governed by the *Cities and Towns Act*) would encompass that of "*municipalité*," whereas both "city" and "town" of the "city or town" parameters of the English text encompass the notion of "municipality."

Obviously, the legislator did not wish to create such a distinction between the two texts of subsection 602.13(1). In such cases, the rules of interpretation state that the enactment must be given the fairest and broadest interpretation that is compatible with its purpose.^[8] The purpose of the *Aeronautics Act* is to ensure aviation safety. In the present case, the less restrictive version of the Act, namely, the English version of subsection 602.13(1) of the CARs, must take precedence.

In this sense, the Member's determination that the notions of "*ville*" and "*village*" encompass that of "*municipalité*" was not unreasonable since the terms "city" or "town" of the English text, which takes precedence here, encompass the former municipality of Pointe-du-Lac as described by the evidence entered in the record at first instance.

The Appeal Panel upholds the review determination. Mr. Vincent was not authorized to conduct an approach, landing or take-off within the built-up area of this settlement since the settlement comes within the prohibition in the English version of subsection 602.13(1) of the CARs. While it is true that virtually all of Quebec's territory is "municipalized", as the Respondent's representative states, the fact nevertheless remains that prohibition in subsection 602.13(1) of the CARs contemplates only manoeuvres executed within the built-up area of this territory and that it is therefore possible to conduct an approach, landing and take-off elsewhere than at a certified airport or military aerodrome.

Reasons for the Appeal Decision:

Suzanne Racine, Member

Concurred:

Faye Smith, Chairperson
Michel Boulianne, Member

^[1] *Interpretation Act*, R.S. 1985, c. I-21, section 12.

^[2] *Trent Wade Moore v. Minister of Transport*, CAT File No. C-0138-33 (TAC), February 14, 1991 (Appeal);
Minister of Transport v. Thomas Ritchie Phillips, CAT File No. C-0014-33, January 26, 1987 (Appeal).

^[3] *Interpretation Act*, R.S. 1985, c. I-21, section 12.

^[4] Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd edition, Butterworths, p. 131.

^[5] *Aztek Aviation Consulting Ltd. v. Canada (Skylink)* (1990) F.T.R. 210.

^[6] Order 851-2001 adopted July 4, 2001, published July 12, 2001, and entered into force January 1, 2002.

^[7] *Delco Aviation Ltd. v. Minister of Transport*, CAT File No. O-1918-41 (in appeal).

^[8] *Interpretation Act*, R.S. c. I-21, section 12.