

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Frederick A. Muskego**, Applicant

- and -

**Minister of Transport**, Respondent

**LEGISLATION:**

*ANO II*, No. 11, s. 2(a)

*ANO II*, No. 8, s. 3

*C.R.C.*, c. 2, ss 200, 210(1)(a)

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**Review Determination**  
**Robert J. MacPherson**

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**Decision: March 26, 1990**

**Heard:** Winnipeg, Manitoba, March 26, 1990

C-0140-02 (TAC)

*That you have contravened section 200(a) of the Air Regulations. The suspension to come into effect Saturday, May 5, 1990, and remains in effect until Saturday, May 19, 1990. The suspension becomes effective and terminates at midnight.*

C-0143-33 (TAC)

*That you have contravened Air Regulation 210(1)(a).*

*The monetary penalty of \$500 is upheld.*

*The penalty is due on or before May 25, 1990, payable to the Receiver General for Canada and forwarded to the Civil Aviation Tribunal at the above address.*

CAT C-0144-33

***That you have contravened ANO, Series II, No. 8, section 3 and ANO, Series II, No. 11, section 2(a).***

***The monetary penalty of \$250 is upheld.***

***The penalty is due on or before May 25, 1990, payable to the Receiver General for Canada and mailed to the Civil Aviation Tribunal at the above address.***

It was agreed that all three files would be heard at one hearing, as all three were related to the same person, during the same period of time, and the same aircraft.

File #1 - CAT C-0144-33 Re: ANO, II, No. 8, section 3 in that between June 29 (amended to June 24) and August 8, 1989, you operated an aircraft, to wit a DHC-2 bearing Canadian registration marks C-FEYQ, when landing and taking off from water at or near Norway House, Manitoba, when you did not have on board said aircraft one approved life jacket for each person on board.

Further, between June 29, (amended to June 24) 1989, and August 8, 1989, at or near Norway House, Manitoba, you operated an aircraft, to wit a DHC-2 bearing Canadian registration marks C-FEYQ, when it was not equipped with at least one first aid kit for the treatment of injuries likely in flight or in a minor accident, a violation of *Air Navigation Order*, Series II, No. 11, section 2(a).

File No. 2 - CAT File No. C-0143-33

*Air Regulation* 210(1)(a) in that between June 29 (then amended to June 24) 1989, and August 8, 1989, at or near Norway House, Manitoba, you operated an aircraft, to wit a DHC-2 bearing Canadian registration marks C-FEYQ, when the certificate of airworthiness was not in force by the reason of the fact that the following deficiencies were identified by the Department of Transport but not rectified:

- covers on floats had cracks and numerous screws missing
- numerous screws missing in floor boards
- the rear seat belts attached cable were incorrect
- the weight and balance report and equipment list required updating for installed equipment
- there was a crack in the lower wing skin, right side, third rib out from the wing root
- the rivets in the right hand leading edge at the right-wing root at fuelage were loose and smoking

File No. 3 - CAT File # C-0140-02

*Air Regulation* 200(a) in that between June 24, 1989, and August 7, 1989, at or near Norway House, Manitoba, you flew an aircraft, to wit DHC-2 bearing Canadian registration marks C-FEYQ, when it was not registered under Part II of the *Air Regulations*.

Mr. A. D. (Fred) Pratt was the case presenting officer for Transport Canada.

Mr. Muskego represented himself.

Mr. Pratt began by introducing the following exhibits for the Minister:

M-1 - Letter amending dates on files 1 and 2 from June 29 to June 24, 1989

M-2 - Copy of section 200, *Air Regulations*

M-3 - Copy of section 210, *Air Regulations*

M-4 - Copy of ANO, II, No. 8, re: Life Saving Equipment

M-5 - Copy of ANO, II, No. 11, re: First Aid Kits

M-6 - Copy of certificate of registration May 17, 1989, C-FEYQ

M-7 - Copy purchase agreement, not dated, re: C-FEYQ Between Terrace Air Ltd., seller, and Cross Lake Trappers Association, purchaser. Bill of Sale dated June 19, 1989, between Terrace Air Ltd., seller, and Cross Lake Trappers Association, to be incorporated.

M-8 - Copy of the reverse side of the certificate of registration for C-FEYQ signed by both parties dated June 22, 1989

M-9 - Copy of section 205, *Air Regulations*

- Copy of section 208, *Air Regulations*

M-10 - Letter detailing registration of Cross Lake Trappers Association Inc. was September 22, 1989

M-11 - Lease between Cross Lake Trappers Association and Mid Manitoba Air Ltd.

M-12 - Copy of certificate of registration C-FEYQ dated August 14, 1989

M-13 - Certified copies of logbook pages from C-FEYQ

M-14 - Copies of form 0009

- Notice of Aircraft Inspection sent to Muskego Air Service, June 29, 1989

M-15 - Copies of form 0009

- Notice of Aircraft Inspection signed and certified by M. Gagnon, August 17, 1989

Mr. Pratt called David G. Parkes, Licensing Inspector, Transport Canada. Mr. Parkes was qualified as a licensing expert. Mr. Parkes testified as to the sequence of aircraft licensing in Canada and the particular exhibits he was asked to elaborate on.

Mr. Parkes explained *Air Regulation 200* - No person shall fly an aircraft unless it is registered.

The Tribunal was then asked to consider the purchase agreement and Bill of Sale between Terrace Air and Cross Lake Trappers Association. It was acknowledged the sale took place.

Mr. Parkes referred to Exhibit M-8 and quoted as follows: "Provided the new owner is 'qualified' to be the registered owner, etc."

For a registered owner to be "qualified", Mr. Parkes referred to *Air Regulations 205* and *208* and elaborated that *205* states, "a corporation that is incorporated" and *208(2)(a)*, "the new owner is qualified and for all other purposes the Certificate of Registration of the Aircraft shall expire", etc.

Exhibit M-10 states the Cross Lake Trappers Association Inc. was not incorporated until September 22, 1989, and, therefore, did not qualify as a registered aircraft owner prior to that date.

Exhibit M-11 was a lease between the Cross Lake Trappers Association and Mid Manitoba Air Inc. for the aircraft in question dated July 3, 1989. This item does not weigh in the evidence, but rather explains the registration.

Exhibit M-12 showed the aircraft C-FEYQ being registered to Mid Manitoba Air dated August 14, 1989.

Exhibit M-13, copies of the journey log pages from September 1988 through September 1989, showed numerous flights during the period of June 24 to August 8, 1989.

Mr. Muskego had no cross-examination of Mr. Parkes.

Mr. Pratt called Inspector J. A. (Jim) Polischuk, who is an airworthiness inspector with Transport Canada.

Polischuk testified he was asked to perform an inspection of the DHC-2, C-FEYQ on June 29, 1989. Prior to his inspection, he telephoned Muskego and identified the aircraft, its location, and received permission to carry out the inspection for purposes of adding the aircraft to Mid Manitoba's aircraft fleet, proposed commercial operations.

Upon completing the inspection, Polischuk telephoned Muskego and informed him of numerous deficiencies that had to be corrected. He testified Muskego said he would have the deficiencies rectified. Polischuk informed him he would follow-up by letter and send a copy of form 0009, "Notice of Aircraft Inspection", detailing the deficiencies. Polischuk wrote Muskego a letter the

next day and, again, phoned Muskego and reviewed the deficiencies that were outstanding. There were 14 deficiencies noted and two submissions requested.

There was no cross-examination of Polischuk's testimony by Muskego.

Frederick A. Muskego was sworn.

Muskego testified the Cross Lake Trappers Association (CLTA) wished to purchase an aircraft and lease it to his company. It was decided to purchase a DHC-2. A DHC-2 was located in mid-June 1989. Prior to the aircraft purchase, Muskego and the CLTA attended at their lawyers office in Winnipeg and were informed that the CLTA would be incorporated "within a week". On June 19, 1989, the aircraft was purchased. On July 3, 1989, the aircraft was leased from the CLTA by Muskego (Mid Manitoba Air). Muskego testified the aircraft salesman telephoned the CLTA lawyer in Winnipeg re: the incorporation status of the company and was told it would be incorporated "in the near future". See Exhibit M-7, Bill of Sale, CLTA "to be incorporated". Muskego produced a letter from CLTA (D-1) outlining their understanding of the incorporation of their association. As well, Muskego produced documents dated August and September 1989 indicating the wing repairs were being affected. Muskego further outlined some problems he had been having with his contract engineer at the time—that was the conclusion of Muskego's testimony.

Cross-examination of Muskego's testimony by Mr. Pratt confirmed times and dates of various phone calls and visits re: the purchase of the aircraft.

The evidence in this matter is rather uncomplicated:

- The CLTA did purchase the aircraft on June 19, 1989 (M-7).
- The aircraft was flown regularly with passengers, by Muskego, from June 24, 1989, and August 8, 1989 (M-13).
- Muskego received three telephone calls from Polischuk re: the deficiencies.
- Muskego received a letter and forms 0009 outlining the deficiencies (M-14).
- Muskego was aware of the non-incorporation of the CLTA as evidenced by his phone calls prior to the aircraft purchase.
- Muskego testified the aircraft salesman and CLTA knew of the non-incorporation status of the CLTA on June 19 as evidenced by the statement on M-7 - Bill of Sale "to be incorporated."
- The aircraft was leased to Mid Manitoba Air Ltd. July 3, 1989 (M-11).
- The forms 0009 were not signed off by an AME until August 17, 1989 (M-15).

The evidence indicates that the aircraft was purchased by a company that was not incorporated and was, therefore, not qualified to register the aircraft. Muskego was aware of this fact as evidenced by his personal visit to the CLTA lawyers office in Winnipeg prior to the purchase, and the notation on the actual Bill of Sale, June 19, 1989.

Muskego, as pilot-in-command, flew the aircraft regularly from June 24, 1989, until July 3, 1989, while the aircraft was owned by a company "not qualified" to register an aircraft in Canada.

Muskego, as pilot-in-command, flew the aircraft on numerous flights between June 24, 1989, and June 30, 1989, without life jackets or a first aid kit.

Muskego, as pilot-in-command, flew the aircraft regularly on numerous flights between June 24, 1989, and August 8, 1989, with numerous deficiencies, as evidenced through Mr. Polischuk's testimony and the recertification of the aircraft by Mr. Gagnon, August 17, 1989.

I, therefore, find in favour of the Minister of Transport on all three files.