

CIVIL AVIATION TRIBUNAL

BETWEEN:

Gerald A. Sinclair, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S.C. 1985, c. A-2, s. 6.9

Air Regulations, C.R.C. 1978, c. 2, s. 534(2)(b)

Open air assembly, Low flying

Review Determination
Robert J. MacPherson

Decision: April 19, 1991

Heard: Saskatoon, Saskatchewan, April 16, 1991

For the reasons given, it is my decision that Gerald A. Sinclair did contravene section 534(2)(b) of the Air Regulations.

The suspension is therefore upheld.

The Applicant has served the suspension.

Review hearing on the above application heard by the Civil Aviation Tribunal at the offices of Meyer Verbatim Reporting Agency Inc., 402-21st Street East, Suite 404, in the city of Saskatoon, Saskatchewan, on the 16th day of April 1991 at 09:00 hours.

On November 27, 1990, Mr. Gerald Sinclair received a Notice of Suspension as follows:

Pursuant to section 6.9 of the *Aeronautics Act*, the Minister of Transport has decided to suspend the above-indicated Canadian aviation document on the grounds that you have contravened the following provision(s): *Air Regulation 534(2)(b)*, in that on or about 12:55 local time on August

4, 1990, near Cudworth, Saskatchewan, you flew an aircraft, to wit, an Aero Commander B1A, Canadian registration C-GSQY, when the aircraft was flown elsewhere than over a built-up area at an altitude of less than 500 feet above the highest obstacle within a radius of 500 feet of the aircraft, to wit, a pick-up truck containing three occupants.

This suspension comes into effect at midnight on December 28, 1990, and remains in effect until midnight on January 11, 1991.

Mr. Pratt opened the case for Transport Canada with a motion that by the fact that Mr. Sinclair had already served his suspension is an admission of guilt.

Further, Mr. Pratt questioned the date of the letter requesting the Tribunal hearing.

Responding to the question of date, Mr. Sinclair's signed letter dated December 22, 1990, was on file with the hearing officer. The Toronto CAT office date stamped the letter January 7, 1991. Mr. Sinclair stated he mailed the letter to Ottawa. It is quite conceivable the letter took until January 7th to reach the Toronto office via Ottawa during the Christmas–New Year season. In view of the fact there is no evidence to the contrary, I find the letter dated December 22, 1990, to be valid, and within the time allotted to allow a review hearing.

Responding to the motion that Mr. Sinclair "admitted guilt" by surrendering his licence and serving his suspension: Mr. Sinclair is a pilot who makes his living by the aerial application of agricultural chemicals. He served his suspension during a period that would not affect his livelihood, but wished a hearing to clear his record. Mr. Pratt argued that serving a suspension was like paying a traffic ticket; when you have paid it, you have admitted guilt. It is my opinion that had a monetary penalty been assessed to Mr. Sinclair, he would not have paid it. The fact that Mr. Sinclair opted to surrender his licence during a period of inactivity in earning his livelihood does not constitute an admission of guilt.

The motion is therefore denied.

Mr. Sinclair was sanctioned under section 534(2)(b), which reads as follows:

(2) Except as provided in subsections (4), (5) and (6), or except in accordance with an authorization issued by the Minister, unless he is taking off, landing or attempting to land, no person shall fly an aircraft ...

(b) elsewhere than over the built-up area of any city, town or other settlement or over any open air assembly of persons at an altitude less than 500 feet above the highest obstacle within a radius of 500 feet from the aircraft.

Aerial applicators also find relief from 534(2)(b) in sections 534(5)(a) and (b), which read as follows:

(5) A person may fly an aircraft at a lower altitude than that specified in paragraph (2)(b) where

- (a) the flight is conducted without creating a hazard to person or property; and
- (b) the aircraft is flown in a special purpose operation of a nature that necessitates the flight of the aircraft at such lower altitude.

The task to be met by Transport in this matter is:

- a) Was the aircraft on a special purpose operation?
- b) Was the aircraft below 500 feet and within 500 feet radius of the persons involved?
- c) Did the flight create a hazard to person or property?

The facts are as follows:

Witness Gerald Mederneck testified that on August 4th, 1990, about 13:00 hours, he was driving his truck along a gravel road near Cudworth, Saskatchewan. His wife yelled, "Look out!" and as he swerved, he temporarily lost control of his truck. He regained control, stopped the truck and saw a yellow aircraft climbing away from their position. Mederneck testified that "he could have touched the aircraft" if he had been standing on the top of his truck.

Witness Vivian Mederneck testified she was in the truck with her husband about 13:00 hours on August 4th, 1990. While riding along a gravel road, she looked out the passenger window and saw an aircraft very close coming towards the truck. She yelled, "Look out!" to her husband. Mrs. Mederneck testified her daughter who was sitting in the seat next to the window was very frightened.

Witness John Wicks, son-in-law of Mederneck, testified he was following his father-in-law's truck at the time and observed a yellow aircraft fly over Mederneck's truck, and observed the truck swerve and then stop. Wicks was about 100 yards behind.

Witness Shelly Wicks testified she was in the car following the truck, with her husband John. She saw an aircraft come out from behind some trees and was heading at the truck. When questioned about the distance the aircraft was from the truck, she answered "about the wing span of the aircraft". Mrs. Wicks' testimony concluded the presentation for Transport Canada.

Mr. Gerald Sinclair called Mr. Doug Wendewer.

Mr. Wendewer testified he lives next to the land being sprayed by Sinclair. On August 4th, 1990, Wendewer was having lunch and watching Sinclair spray the field. Wendewer was outside when he saw Sinclair come down between the house and the trees for the "clean-up run" down the end of the field. Wendewer saw Sinclair "pull up" about halfway between the house and the road. Wendewer was inconclusive under cross-examination as to the height and direction of the spray plane after it pulled up.

Mr. Gerald Sinclair was sworn in.

Sinclair testified he was spraying the field in question on the date and at the time previously recorded. Sinclair said he had been aware of the road and had looked for traffic or dust rising from the road prior to spraying. Sinclair stated he was down to spray height of 10 feet about halfway down the field when he pulled up to the right. He was travelling at 90-100 mph.

Discussion of the evidence.

Mr. Sinclair was operating a special purpose operation, aerial application.

Wendewer testified he measured the length of the driveway at .4 of a km by his car speedometer. Based on this measurement, the distance from the house to the road was about 1,315 feet. Sinclair testified he was travelling at 90-100 mph or about 140 feet per second. Sinclair would have covered the length of the field in about 10 seconds.

Two witnesses, Mr. and Mrs. Mederneck, gave evidence that the aircraft passed very low over them.

Two other witnesses, Mr. and Mrs. Wicks, testified the aircraft was close to the truck, but they were 100 yards behind.

The landowner, Wendewer, was at the front of his house .4 of a km away and was inconclusive as to aircraft direction and height.

Mr. Sinclair did not see any traffic when he checked.

There were four vehicles in the Mederneck's party. Sinclair did not initially see them. If Sinclair pulled up and to the right, he would have flown over the Wicks' car. The Wicks testified they saw the aircraft fly over the Mederneck's truck.

From the testimony, I believe Sinclair was surprised by the truck on the road, which he had not seen originally. Upon seeing the traffic he pulled up. The evidence indicates he indeed flew over or near the truck, at a low altitude.

I find therefore, that the aircraft was below 500 feet of altitude.

If a pilot is operating under section 534(5) a "special purpose" he must do so in such a manner that will not cause a "hazard to persons or property".

The evidence shows the occupants of the truck were of the opinion they were in danger, which caused the passenger to yell, "Look out!" and the driver to swerve the truck.

Black's Law Dictionary defines hazard:

"A risk or peril assumed or involved; the danger or risk lurking in a situation which by chance or fortuity develops or may develop into an active agency of harm; exposure to the chance of loss or injury".

It does not mean an accident has to occur to be a hazard; it is merely the potential of damage that we must deal with.

A review of the evidence shows the pilot was unaware of the traffic on the road. The evidence in this case leads me to believe a hazard was created and it did exist at the time.

The suspension of Mr. Sinclair's licence is therefore upheld.

I would like to thank Mr. Pratt of Transport Canada and Mr. Gerald Sinclair for their well-documented presentations on this matter.