

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Minister of Transport**, Applicant

- and -

**William Robert MacKenzie**, Respondent

**LEGISLATION:**

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

*Airspace Structure, Classification and Use Regulations*, DORS/93-458, s.7(1)

**Low Altitude Flight, Flight In Class F Airspace, Elsewhere Than Over A Built-Up Area**

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**Review Determination**  
**Philip D. Jardim**

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**Decision: January 23, 1996**

*The Tribunal upholds the decision of the Minister as described in the Notice of Assessment of Monetary Penalty. The Civil Aviation Tribunal must receive payment of the \$1100.00 penalty, made out to the order of the Receiver General for Canada, within 15 days following service of this determination.*

**The Review Hearing** on the above matter was held Tuesday, January 23, 1996 at 10:00 hours at the Barrie Court House, in the city of Barrie, Ontario.

**BACKGROUND**

On March 28, 1994, Mr. William Robert MacKenzie was the Captain of a Piper Cherokee PA28-140 aircraft registered C-GNWO. The Minister of Transport alleges that Mr. MacKenzie indulged in low flying while infringing the boundaries of airspace CYR 502 which he did not have permission to enter.

Paragraph 534(2)(b) of the *Air Regulations* states that:

. . . 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.

Subsection 7(1) of the *Airspace Structure, Classification and Use Regulations* requires that, with respect to CYR 502 at Camp Borden, Ontario, the approval of the Base Operations Officer CFB Borden must be sought and obtained before an aircraft enters its boundaries.

Evidence was adduced by six independent witnesses for the Minister of Transport that aircraft C-GNWO breached both of the above regulations on two occasions, March 28 and 30, 1994.

## **THE APPLICANT'S EVIDENCE**

In a pre-hearing agreement, the Minister of Transport, represented by Mr. K. Trethewey, Regional Director of Regulatory Compliance, Transport Canada, sought and obtained the agreement of Mr. MacKenzie that he was the pilot-in-command of Piper C-GNWO on March 28 and 30, 1994, and that he had not requested nor received authorization to enter CYR 502 as it was not significant to the planned flight route of the aircraft.

At the request of Mr. Trethewey, and in fairness to the Respondent, all witnesses were excluded until they testified. The witnesses were as follows:

- **Mr. Jim Corbett, Inspector, T.C.** was assigned to the investigation of the incident. He was not an eyewitness to the events but adduced evidence and presented exhibits which were used in the evidence.
- **Sgt. Lerette, Canadian Forces** – Airborne Electronics Sensor Operator. He was present and witnessed the incident on March 28, 1994.
- **Sgt. Shirley Lawless, Canadian Forces** – Chief Clerk Admin. She was present and witnessed the incident on March 28, 1994.
- **Cpl. Jeff MacDonald – CFB Kingston.** He was present and witnessed the incident on March 28, 1994. He further wrote a report on the incident – Exhibit M-5.
- **Constable Kevin Rounds, OPP.** He was present, witnessed the incident and wrote a report – Exhibit M-6.
- **H.A. Larente, Canadian Forces – Support Officer, CFB North Bay.** He was present, witnessed the incidents on both days, March 28 and 30, and wrote a report – Exhibit M-7.

While there were a few anomalies of a minor nature in the evidence of the eye witnesses they were all unanimous as to the following salient points:

1. The aircraft was very low, varying between treetop height and 500 feet above ground level.

2. The aircraft was being flown in a dangerous manner such as they all felt nervous and/or threatened by it.
3. The aircraft repeatedly "buzzed" them.
4. The noise of the aircraft was such as to disrupt the conduct of the course in which they were all involved.
5. The aircraft flew right overhead of them on repeated occasions during the exercise.

The anomalies in the eyewitnesses' evidence can generally be ascribed as due to the witnesses' unfamiliarity with aircraft and their configuration and to the identification and the length of time which has elapsed since the incident (21 months), for example: whether it was a high wing or a low wing aircraft, its colour – although they all generally agreed that it was white – the length of time the aircraft was overhead of them, and whether there were two people or only one person in the aircraft.

I do not consider these minor anomalies significant to disqualify the evidence of any of the witnesses.

## **THE RESPONDENT'S EVIDENCE**

The Respondent, Mr. W.R. MacKenzie, gave a written statement to Transport Canada which was tendered as Exhibit M-4 by the Minister. He acknowledges being in command of the aircraft with a student on board, but denies that he flew the aircraft in the manner described by the witnesses above, or that he even saw people or buildings on the ground. Mr. MacKenzie was training a commercial pilot candidate, Mr. Larry LeBlanc, who would later testify on his behalf.

Mr. MacKenzie then introduced his first witness, his wife, **Cpl. Christine MacKenzie Canadian Forces**. Mrs. MacKenzie was on the ground with the above mentioned witnesses on the day of the incident. She was in the same group as Constable Rounds, Cpl. MacDonald and others. She claims that her husband, Mr. W.R. MacKenzie, did not and could not have known that she was there! Mrs. MacKenzie did not agree with her colleagues as to where they were on the ground. She pointed to a spot on the CFB BORDEN Chart outside the CYR 502 Danger Area.

She denied that there was anything unusual or unsafe about the operation of the aircraft on that day, and she said that the aircraft was never below 500 feet. She did however agree that the aircraft was very noisy such as to disrupt conversation. She confirmed that they were all dressed in camouflage green and that it would have been difficult for a pilot to see them on the ground. She could not see the registration marks on the aircraft as it was higher than 400 feet. The aircraft did two circuits in their vicinity before flying off in the direction of the Camp Borden airfield. She said the aircraft was never at treetop height, and it caused her no concern.

**Mr. Larry Le Blanc, Trainee/Commercial Pilot Candidate.** He testified that they had neither flown below 500 feet nor had they infringed the danger area. He identified a point on the chart as the area in which they circled, outside the danger area. Mr. Le Blanc said that, at the time of the incident, he was doing diversion calculations while flying the aircraft in a circling or holding manoeuvre at 500 feet above the ground.

He stated that there was a strong wind blowing and that it was rough. He denied that any unusual manoeuvres were carried out within the danger area. Indeed he showed that the area in which they were circling was outside that area. Mr. LeBlanc said that he saw no people nor buildings in the area. When asked by Mr. Trethewey how he judged his height above the ground, he said that he used the altimeter – he said it was reading about 800 feet.

I pointed out that the field elevation of Borden is 730 feet, and that for him to have been 500 feet above the ground he would have had to be at least 1230 feet according to his altimeter. Mr. Le Blanc seemed somewhat unsure of himself, especially when questioned about his altitude.

## **CONCLUSION AND DETERMINATION**

In the face of the consistent, independent and corroborative evidence given by witnesses for the Minister of Transport, I find that the case against Mr. MacKenzie has been overwhelmingly proved.

Military personnel have a tendency to protect their own. The fact that they have chosen not to, on this occasion, means that they really felt threatened and endangered to the point that they could not support Mr. MacKenzie by remaining silent.

I cannot accept the statement given by Mr. MacKenzie, nor the supporting evidence given by his wife and his student. His bad example to a young and inexperienced pilot, Mr. Le Blanc, is to be deprecated in the strongest terms.

I have no doubt that Mr. MacKenzie flew C-GNWO in a reckless and wanton manner on March 28 and 30, 1994, and the penalty levied by Transport Canada, although far less than the maximum allowable, should be allowed to stay. I trust that this will deter him from endangering his own and others' lives in the future. While the incursion into CYR 502 may have been unintentional, the fact that it was done in such a reckless manner on two occasions following each other makes it inexcusable.

Mr. Trethewey was very fair to Mr. MacKenzie in only disclosing that he has been fined before for a similar offence after I delivered my decision at the hearing (see Exhibit M-8). He was fined \$100 for a similar incident in Saskatchewan February 19, 1993.

**The Minister's allegation is upheld, and Mr. MacKenzie must pay the assessed penalty as provided for in the Act.**

Philip Jardim  
Member  
Civil Aviation Tribunal