

CIVIL AVIATION TRIBUNAL

BETWEEN:

Minister of Transport, Applicant

- and -

Yvan Ferland, Respondent

LEGISLATION:

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

Canadian Aviation Regulations, s. 602.14(2)(b)

Responsibility of Pilot-in-Command, Low flying, Built-up area

**Review Determination
Suzanne Racine**

Decision: February 5, 2003

TRANSLATION

The Minister has proven, on a balance of probabilities, the offence mentioned in the Notice of Assessment of Monetary Penalty issued May 22, 2002, and the assessment of the penalty of \$500 is confirmed. This amount, made payable to the Receiver General for Canada, must be received by the Civil Aviation Tribunal within 15 days of service of this determination.

A **review hearing** on the above matter, previously scheduled for September 16, 2002, and postponed at the Respondent's request, was held October 28, 2002, at 10:00 hours at the Federal Court of Canada in Montréal and on November 25, 2002, at 10:00 hours in the courthouse in Montréal, Québec.

The witnesses were excluded.

OBJECT OF THE REVIEW HEARING

On May 22, 2002, the Minister served on the Respondent, Mr. Yvan Ferland, a notice of monetary penalty for the amount of \$500 pursuant to section 7.7 of the *Aeronautics Act*, for having contravened paragraph 602.14(2)(b) of the *Canadian Aviation Regulations* (CARs).

The Minister alleged that, on August 10, 2001, at about 13:00 hours local time, the Respondent operated as pilot-in-command aircraft registered as C-GPCV at a distance less than 500 feet from a building in the vicinity of 185 Chemin Saint-Laurent, Baie-Saint-Paul, Québec.

As the Respondent had not paid the amount of \$500 by the specified date of June 26, 2002, the Civil Aviation Tribunal has duly convened this hearing.

THE LAW

Section 7.7 of the *Aeronautics Act* provides as follows:

7.7 (1) Where the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister shall notify the person of the allegations against the person in such form as the Governor in Council may by regulation prescribe, specifying in the notice, in addition to any other information that may be so prescribed,

(a) subject to any regulations made under paragraph 7.6(1)(b), the amount that is determined by the Minister, in accordance with such guidelines as the Minister may make for the purpose, to be the amount that must be paid to the Minister by the person as the penalty for the contravention in the event that the person does not wish to appear before a member of the Tribunal to make representations in respect of the allegations; and

(b) the time, being not less than thirty days after the date the notice is served or sent, at or before which and the place at which the amount is required to be paid in the event referred to in paragraph (a).

Paragraph 602.14(2)(b) of the CARs reads as follows:

(2) Except where conducting a take-off, approach or landing or where permitted under section 602.15, no person shall operate an aircraft

(a) over a built-up area or over an open-air assembly of persons unless the aircraft is operated at an altitude from which, in the event of an emergency necessitating an immediate landing, it would be possible to land the aircraft without creating a hazard to persons or property on the surface, and, in any case, at an altitude that is not lower than

(i) for aeroplanes, 1,000 feet above the highest obstacle located within a horizontal distance of 2,000 feet from the aeroplane,

(ii) for balloons, 500 feet above the highest obstacle located within a horizontal distance of 500 feet from the balloon, or

(iii) for an aircraft other than an aeroplane or a balloon, 1,000 feet above the highest obstacle located within a horizontal distance of 500 feet from the aircraft; and

(b) in circumstances other than those referred to in paragraph (a), at a distance less than 500 feet from any person, vessel, vehicle or structure.

Paragraph 602.15(2)(b) of the CARs stipulates that:

(2) A person may operate an aircraft, to the extent necessary for the purpose of the operation in which the aircraft is engaged, at altitudes and distances less than those set out in

(a) paragraph 602.14(2)(a), where operation of the aircraft is authorized under Subpart 3 or section 702.22;

(b) paragraph 602.14(2)(b), where the aircraft is operated without creating a hazard to persons or property on the surface and the aircraft is operated for the purpose of

(i) aerial application or aerial inspection,

(ii) aerial photography conducted by the holder of an air operator certificate,

(iii) helicopter external load operations, or

(iv) flight training conducted by or under the supervision of a qualified flight instructor.

THE FACTS

Applicant's Evidence

The Minister's representative called **Mr. Claude Renaud**, an inspector with the Aviation Enforcement Branch of the Department of Transport for the past five years. Previously, Mr. Renaud worked as a bush and charter pilot and was a flight instructor at various levels.

Mr. Renaud filed the following documents in evidence:

- As Exhibit M-1, a copy of a CADORS report 2001Q0649 (Civil Aviation Daily Occurrence Reporting System) forwarded to Transport Canada by NAVCANADA regarding an accident that occurred at Baie-Saint-Paul, on August 10, 2001, at about

17:00 Z, involving a Cessna 172P registered as C-GPCV. The Member, however, admitted in evidence only the first three categories of information contained in the report;

- As Exhibit M-2, a true copy of the original of the search results for the owner of the above-mentioned aircraft, namely, A.T.L. Air Tuteurs Ltée (A.T.L.) of Saint-Hubert, Québec;
- As Exhibit M-3, the original of the daily flight log obtained from A.T.L. showing, notably, that Mr. Ferland and two (2) passengers left Saint-Hubert on board the aircraft registered as C-GPCV bound for La Malbaie – Charlevoix (CYML), Québec, at about 11:00 hours on August 10, 2001;
- As Exhibit M-4, a copy of Mr. Yvan Ferland's commercial pilot licence no. CA 381455 together with the medical certificate;
- As Exhibit M-5, the flight data obtained from the flight service station (FSS) in Montréal and sent by facsimile transmission to Mr. Renaud by A.T.L.'s chief instructor;
- In a bundle, as Exhibit M-6, six (6) photographs of the scene and vicinity of 185 Chemin Saint-Laurent in Baie-Saint-Paul taken by Mr. Renaud on February 13, 2002, and as Exhibit M-7, two (2) diskettes containing the said digital photographs;

Photograph 1 shows the home of Mr. Roberge situated at 185 Chemin Saint-Laurent, the stable behind as well as the old Hydro-Québec pole right next to the new one. Photograph 4 shows the same elements taken from a slightly sharper angle.

Photograph 2 shows the power lines severed at three (3) places, which had to be reconnected by Hydro-Québec.

Photograph 3, taken from Mr. Roberge's home, is the front view of said home, in particular the presence of cedars in the foreground and aspens in the background.

Photograph 5, taken from the home of the neighbour across the way, which is situated on a promontory, shows Mr. Roberge's property down below.

Photograph 6, taken from the back field, shows a rear view of the property, that is, the home, the above-ground pool and the stable.

Photograph 7, taken from Chemin Saint-Laurent, shows the back (field) of Mr. Roberge's property.

- Exhibit M-8 is the certificate of registration of aircraft C-GPCV.

Mr. Renaud indicated that he spoke on the telephone with Mr. Ferland on November 28, 2001. Mr. Ferland apparently told him that the landing surface prepared for him on Mr. Roberge's land was not suitable as it was too short. Not satisfied with the limited information obtained during this conversation, Mr. Renaud asked the Respondent to send him a letter containing additional information about the manoeuvres and altitudes maintained on August 10, 2001. Mr. Ferland did not follow up Mr. Renaud's request.

Mr. Renaud, an experienced pilot, said that any pilot wishing to assess a landing surface must first and foremost assess the wind direction from certain visual reference points, such as trees or

a water surface, by flying a pattern as much as possible into the wind, at about 1,000 feet to take note of any surrounding obstacles before proceeding with an initial approach. His wind drift can be assessed with the aid of a turn coordinator. It can be helpful to fly a second pattern, at 500 feet, with a tailwind, to take in any details of the surrounding area that may have escaped the pilot's notice on initial approach. Mr. Renaud pointed out that a pilot cannot operate an aircraft at a distance less than 500 feet from any structure or person, except where conducting a take-off, approach or landing of this aircraft. This distance prescribed by the regulations delimits a sort of dome with a radius of 500 feet that envelops this structure and the persons there so as to prevent any intrusion that might endanger them.

In cross-examination by Mr. Laveaux, Mr. Renaud mentioned that he had once worked for A.T.L., first as a pilot and then as a flight instructor. He confirmed that 30-knot winds are an important factor that the pilot should take into account in his manoeuvres, as they can affect the stability of the aircraft and influence its speed. He does not believe that the limits of the aircraft were exceeded by 30-knot winds. Mr. Renaud was never informed that aircraft C-GPCV may have been defective on August 10, 2001. He agreed with the Respondent's representative that Transport Canada would not have issued a Notice of Assessment of Monetary Penalty had the pilot made a landing on the strip prepared for him on Mr. Roberge's property, on August 10, 2001.

The Minister's second witness was **Mr. André Lafleur**, chief instructor at A.T.L. for 30 years. Mr. Lafleur has known the Respondent for over 10 years and administered his practical exams for obtaining his private and commercial pilot licences at A.T.L.

On August 10, 2001, Mr. Lafleur thought it advisable to check Mr. Ferland's flying proficiency to be in compliance with the terms of A.T.L.'s insurance policy, as Mr. Ferland had not flown in over two (2) months. Mr. Lafleur therefore accompanied Mr. Ferland on board the Cessna C-GPCV, and had him execute three (3) touch-and-gos, as shown by the first entry in the document filed as Exhibit M-3. According to Mr. Lafleur, Mr. Ferland demonstrated during the exercise that he was proficient. He was therefore authorized to operate aircraft C-GPCV for a flight to La Malbaie – Charlevoix (CYML) that day. The Cessna 172P C-GPCV, leased by Mr. Ferland for a visual flight, was functioning very well and had equipment on board for instrument flight as well as a turn coordinator.

Mr. Lafleur submitted that Mr. Ferland checked the weather, fuelled the aircraft and got his flight plan over the telephone. He was accompanied on departure from Saint-Hubert by a man in his fifties and the man's son. Asked about the referencing and landing techniques, Mr. Lafleur informed us that he teaches his students to conduct an initial overflight of the field at an altitude of 1,000 feet and then a second at 200/300 feet before landing, full flaps, on the landing surface.

In cross-examination, Mr. Lafleur indicated that he knew Mr. Renaud as a former instructor at A.T.L. He then said that he had not witnessed the incidents that occurred August 10, 2001, that aircraft C-GPCV was airworthy and that A.T.L. makes regular inspections of its aircraft. He explained that it was nevertheless the pilot's responsibility to make a pre-flight inspection to detect any problems and report them immediately in the log book and to maintenance, as needed. Mr. Lafleur did not consult the log book of C-GPCV as it had been turned over to the authorities

of the Transportation Safety Board (TSB) at the same time as the aircraft which was involved in the accident.

Mr. Gaétan Roberge, residing at 185 Chemin Saint-Laurent in Baie-Saint-Paul, testified next. A retired Sûreté du Québec police officer, he stated that Magellan Lavoie came to see him about ten days before August 10, 2001, to ask him for his permission to use his field (a circle measuring ½ mile in diameter where he trains his horses) situated behind his home, as a landing strip to organize outings. On about August 7 or 8, 2001, Mr. Lavoie confirmed to Mr. Roberge that the strip was intended for Mr. Ferland, who would use it in the afternoon of August 10, 2001. Mr. Lavoie went to the site "to walk the strip" and told him that Mr. Ferland "would have enough room" to land. Mr. Roberge agreed, he cut the hay that was growing on the "improvised" strip and set up a few markers at certain spots.

On August 10, 2001, Mr. Roberge was at his neighbour's across the way when he heard, then saw a plane coming from Québec City, which must have been the aircraft flown by Mr. Ferland, make an initial approach in the direction of Baie-Saint-Paul (east/northeast) and then return to fly over the strip at a height, according to him, of 200 or 300 feet. After that, he saw him immediately pull up and make a second approach, still in the same direction, this time at a lower altitude than before. The aircraft was, in his words, "all crooked, all askew" and he thought "it's coming in fast." According to Mr. Roberge, fairly strong northwest winds were blowing that day. The pilot "did a go-around" and pulled up again, going by the stable, then over his home, at a distance that he estimated to be about 60 feet from the house.

The accident occurred during the third approach. Mr. Ferland, returning again in the same direction, of Baie-Saint-Paul, was still "all crooked," this was probably owing to the winds, according to him. Mr. Roberge said that the pilot "dropped, came close to the ground then did a go-around" because he was approaching the stable. In wanting to pull up, Mr. Ferland's aircraft passed just 4 or 5 feet from the chimney of his home and, being unable to gain enough altitude, snagged the power lines with the left wheel of the aircraft before crashing. Mr. Roberge did not note any unusual engine noise during the manoeuvres. He said that his home is 31 feet high; this height includes a 4-foot chimney.

In cross-examination by Mr. Laveaux, Mr. Roberge said that he had had no contact with Mr. Ferland and that he had received no instruction from him about the landing strip. He then admitted that the home of his neighbour across the way, from which he observed Mr. Ferland's aircraft, was higher by ... "40, 55, 60 feet higher," being built on a promontory, whereas his own was not. He agreed with the Respondent's representative that this perspective can give the impression that everything is happening closer than it really is. He also said that he clearly heard the sound coming from the aircraft that was flying over his field, that the aircraft seemed to him to be slightly losing control the last time and that the winds that day were certainly no help.

On re-examination by the Minister's representative, Mr. Roberge explained that the mountains shown in photograph 5 are situated at least some fifteen miles from his home. He again confirmed that Mr. Ferland's aircraft descended gradually on each approach lowering its course, and then did a go-around. The last time, according to him, the pilot reduced his speed, came to within 10 or 15 feet of the ground, "all askew." The aircraft seemed to him to be off balance

when he heard the "go-around." Not having gained enough altitude, the aircraft crashed soon after.

Questioned by the Member about the last two overflights, Mr. Roberge expressed himself in these words: The second time ... "he came down, he dropped and then he did a go-around," the third time, "he came closer, ... cut to the right ... he came very close to the stable ... and 4 or 5 feet from the chimney."

Ms. Réjeanne Lavoie, Mr. Roberge's wife, indicated that she was in the pool of their home at 185 Chemin Saint-Laurent, Baie-Saint-Paul, with two (2) other people when she first saw an aircraft fly over her home at "a good height." The second time, she said "that it came very low, then, it pulled up." The third and last time, she said it flew even lower but pulled up and apparently "... passed [about this far] from my chimney, I was sure it was going to hit the house" Ms. Lavoie did not notice any change in the noise caused by the aircraft's engine during the various manoeuvres performed by the pilot. She said she was very frightened. Ms. Lavoie was not cross-examined by Mr. Laveaux.

Questioned by the Member, Ms. Lavoie said this: "The first [time], it came in, it dropped. After that, there, ... it came in even lower, and even a wheel nearly touched and then it didn't. And it left ..." The third time, Ms. Lavoie said to herself: "It's going to make it! Then it didn't make it again."

Mr. Gilles Nobert testified next. Mr. Nobert has been an insurance adjuster for 30 years. In this capacity, he investigated the circumstances surrounding the accident of aircraft C-GPCV on August 10, 2001, at Baie-Saint-Paul. He was not present at the time of the accident. He arrived, however, at the scene at about 18:30 hours, at which time the aircraft was still blocking the road.

Mr. Nobert met with Mr. Ferland on August 20, 2001, to get his version of the events. Mr. Nobert wrote down a statement of the incident based on the information provided by Mr. Ferland. Each page of this document is countersigned by Messrs. Ferland and Nobert. On the last page, it states "I have read and signed at Montréal, August 20, 2001," followed by the signatures of Messrs. Ferland and Nobert.

Before admitting this document into evidence, counsel for the Respondent pointed out to the Member that the Transport Canada representative had not disclosed to him his client's statement to Mr. Nobert. The Transport Canada representative was unable to show, unequivocally, that he had informed the Respondent of this document. The Member then adjourned the hearing to allow the Respondent's counsel to read it over. On returning from the adjournment, Mr. Ferland's counsel asked the Member to suspend the hearing to allow him to call a witness in order to prepare a full answer and defence, and this was granted.

The hearing of October 28, 2002, resumed November 25, 2002. Mr. Laveaux informed the Member that he did not intend to call Mr. Ferland. He asked to examine in what circumstances Mr. Nobert had obtained Mr. Ferland's statement. The examination of these circumstances revealed that Mr. Nobert tried to contact Mr. Ferland, then hospitalized at *Enfant-Jésus de Québec* hospital, on August 17, 2001, but that hospital staff informed him that he was unable to

speak. On learning of his discharge from hospital, Mr. Nobert telephoned Mr. Ferland at home on August 19, 2001, that is, the day after his discharge. Mr. Ferland agreed to see Mr. Nobert the next day, August 20, at a neighbour's house to describe to him his version of the facts. Mr. Ferland, wearing a cast, sat next to Mr. Nobert. The latter wrote down in his own hand the statement of events based on the information conveyed by Mr. Ferland, then read it back to him. He does not remember sending him a copy. He remembers making a correction on the second page of the statement by changing the 6 in 600 feet to an 8, to read 800 feet. Mr. Ferland seemed lucid at the time of their meeting and did not mention the fact that he was under the influence of any medication.

The Member allowed Mr. Ferland's voluntary statement to be produced while explaining that it was hearsay documentary evidence which, while admissible, is weaker as it can be neither confirmed by the person who gave it, nor dealt with in cross-examination. Two (2) copies of this same statement have been filed in evidence (the original being in the hands of British Aviation Insurance Group): one, as Exhibit M-9a, the right-hand margin of which has been completed in the hand of Mr. Nobert, and a second, as Exhibit M-9b, in which it is more difficult to distinguish the ends of sentences in the right-hand margin.

Questioned by the Minister's representative, Mr. Nobert recalled that Mr. Ferland had voluntarily given him his version of the events, on August 20, 2001. He asked him questions, as he does in every investigation, to establish the chronology of the events of that day, notably, regarding the altitudes maintained during the patterns. He accurately noted down the following comments: "I crossed the strip at 1,000 feet and made a low approach at 800 feet and flew another pattern to make an approach in the direction of the road at 400 or 500 ASL. I told Magellan I'm not landing here. I did a go-around" Mr. Nobert did not think that Mr. Ferland intended to land on the strip that day.

In cross-examination, Mr. Nobert said that Mr. Ferland was able, from where he was, to read what he was writing.

On further questioning by the Minister's representative, **Mr. Renaud** told the Member that he had referenced again with the aid of a GPS the lowest point and the highest point of Mr. Roberge's property. The exercise was carried out twice in clear weather and clear sky. From the GPS, he noted each time that the property's lowest point was at 90-100 feet above sea level (ASL) and its highest was at 115-130 feet ASL. He did not record the data.

Respondent's Evidence

Mr. Laveaux did not call Mr. Ferland or any other witness.

Minister's Argument and Representations Regarding Sanctions

The Minister's representative maintains having established, on a balance of probabilities, that Mr. Ferland operated, on August 10, 2001, at about 13:00 hours local time, the aircraft registered as C-GPCV, as pilot-in-command, at a distance less than 500 feet from a structure in the vicinity of 185 Chemin Saint-Laurent, Baie-Saint-Paul. This offence occurred at least three times without

landing, and he therefore considers it to be an aggravating factor that justifies increasing the fine, set at \$250 for a first offence, to \$500.

The Minister alleges that Mr. Ferland should have positioned his aircraft into the wind for better linear control. The evidence showed that strong northwest winds were blowing in the area on August 10, 2001, and that their presence, while they might affect the stability and speed of the aircraft, was not enough to lead the aircraft flown by Mr. Ferland to exceed its limits.

Respondent's Argument and Representation Regarding Sanctions

The Respondent's representative maintains that the Minister has not discharged its burden of proof. According to him, Mr. Roberge and Ms. Lavoie witnessed, on August 10, 2001, landing attempts by Mr. Ferland that were aborted due to high winds, Mr. Ferland being authorized to operate aircraft C-GPCV at a distance of less than 500 feet. Mr. Laveaux asked the Member to consider only the testimony of Mr. Roberge and Ms. Lavoie who said that the aircraft flown by Mr. Ferland was attempting to land on the surface prepared for him. The penalty assessed by the Minister against his client is not justified, as he had committed no offence.

REASONS

The identities of the pilot Ferland and of the aircraft he was flying have been established by the filing in evidence of the original of the daily flight log obtained from A.T.L. (M-3). This exhibit indicates that Mr. Ferland, following a check of his flying proficiency by the chief instructor André Lafleur, departed Saint-Hubert on board aircraft C-GPCV bound for La Malbaie – Charlevoix (CYML) at about 11:00 hours local time, on August 10, 2001. The flight data obtained from the Montréal FSS show that aircraft C-GPCV flown by Mr. Ferland (M-5), a commercial pilot (M-4/licence no. 381455), was expected at La Malbaie – Charlevoix at about 1700 Z. CADORS 2001Q0649 (M-1) confirms that an accident occurred at about 1700 Z in Baie-Saint-Paul on August 10, 2001, involving the Cessna C-GPCV, owned by A.T.L. (M-2 and M-8).

The Minister called five (5) witnesses. The first two witnesses, Messrs. Renaud and Lafleur, were not present at the scene on the date and time specified in the Notice of Assessment of Monetary Penalty. A third witness, Mr. Nobert, did not arrive on the scene until about 18:30 hours local time on the day of the accident. Only the witnesses Mr. Roberge and his spouse Ms. Lavoie saw and heard what happened on August 10, 2001, at about 13:00 hours local time, when aircraft C-GPCV flown by Mr. Ferland found itself over their property at 185 Chemin Saint-Laurent in Baie-Saint-Paul, Québec. The best evidence available to me for determining whether Mr. Ferland operated aircraft C-GPCV at a distance less than 500 feet from any person, vessel, vehicle or structure remains, therefore, the reports of the eyewitnesses, Mr. Roberge and Ms. Lavoie.

There is no doubt that aircraft C-GPCV flown by Mr. Ferland on August 10, 2001, approached at a distance less than 500 feet from the structures at 185 Chemin Saint-Laurent, Baie-Saint-Paul. The undisputed testimonies of Mr. Roberge and Ms. Lavoie speak volumes in this regard. Mr. Roberge said that Mr. Ferland first operated the aircraft at a distance of about 200 or 300 feet

from the house and stable when he arrived from Québec City, a second time at a distance of about 50-60 feet from his home, and a final time at a distance of only about 4-5 feet from the chimney of his home, which is 31 feet high (including the chimney).

It is true that Mr. Roberge admitted in cross-examination that, from a 55-to-60 foot promontory on the property across the way at the time of the events, it was possible to have the impression that the aircraft was closer than it really was. The fact remains that the evidence, notwithstanding the possible miscalculation of the distances owing to the perspective from the observation point, unequivocally shows that Mr. Ferland operated the aircraft at distances much less than 500 feet from persons and structures at least three (3) times that day, contrary to the provisions of the Canadian aviation regulations. In fact, the witness Ms. Lavoie, unlike her spouse, who observed the events from the top of a promontory, observed the aircraft flown by Mr. Ferland from her above-ground pool situated behind her home, and was therefore much closer to ground level. Her words ("It passed [about this far] from my chimney" and "It's coming right at us in the pool") corroborate her husband's assertions that the aircraft came very close to the buildings on their property on the latter two occasions.

The measurements placed in evidence and obtained with the aid of a GPS and checked twice by Mr. Renaud place the difference in level of the Roberges' property at 90-100 feet ASL at its lowest point and 115-130 feet ASL at its highest point. In order to comply with the regulations, the altimeter of the aircraft flown by Mr. Ferland should have indicated an altitude of 590 to 600 feet ASL when he was flying over the lowest point of the Roberges' property, and 615 to 630 feet ASL at its highest point. Mr. Ferland allegedly told Mr. Nobert that the lowest pattern was made at 400 or 500 feet ASL. Even at that altitude, Mr. Ferland was in breach of the regulations. In any event, I ascribe little significance to this aspect of the evidence, as the version of the eyewitnesses conflicts with what Mr. Ferland said as recorded in exhibits M-9a and M-9b, taken from hearsay evidence. It is in fact difficult for me to believe that Mr. Ferland flew over the Roberges' property at 400-500 feet ASL when they say that the aircraft came very close to the chimney of their property.

Paragraph 602.14(2)(b) of the CARs states that, except where conducting a take-off, approach or landing or where permitted under section 602.15, no person shall operate an aircraft at a distance less than 500 feet from any person, vessel, vehicle or structure. This section delimits, as Mr. Renaud pointed out, an imaginary dome with a 500-foot radius covering and protecting, notably, persons and structures from an intrusion that may threaten or endanger them.

The testimonies of Mr. Roberge and Ms. Lavoie have convinced me that Mr. Ferland operated aircraft C-GPCV at a distance of less than 500 feet on August 10, 2001, in the vicinity of 185 Chemin Saint-Laurent, Baie-Saint-Paul.

However, paragraph 602.14(2)(b) of the CARs provides exceptions to its application. First of all, it is clear that Mr. Ferland's operation of the aircraft is not covered by one of the exceptions of subparagraphs 602.15(2)(b)(i), (ii), (iii), (iv) of the CARs. Otherwise, might one submit that the aircraft flown by Mr. Ferland was attempting a landing or at least an approach on that day of August 10, 2001? Might Mr. Ferland invoke, as his representative has submitted, an exception

provided in subsection 602.14(2) of the CARs, since the aircraft flown by Mr. Ferland was attempting one of these manoeuvres?

To answer this question, I have, on one hand, the testimonies of Mr. Roberge and Ms. Lavoie who observed Mr. Ferland's manoeuvres over their property, on August 10, 2001. Their testimonies have been consistent and coherent both on examination and cross-examination and when questioned by the Member. The witnesses had a clear and accurate memory of the events that occurred on August 10, 2001, at about 13:00 hours local time, at 185 Chemin Saint-Laurent.

These eyewitnesses reported that the aircraft flown by Mr. Ferland had made three overflights at a low altitude over their property. The evidence in fact showed that the aircraft flown by Mr. Ferland was first observed by Mr. Roberge when it arrived from the direction of Québec City heading for Baie-Saint-Paul, at a height of about 200 or 300 feet before pulling up. A second time, the aircraft was even a bit lower. It dropped its course and approached gradually "askew" to pull up and pass about 50 or 60 feet over the house. The last time, the overflight was even lower, to the point that Ms. Lavoie thought it was going to end up landing. She expressed herself thus ... "It's going to make it! Then it didn't make it again." The aircraft then passed a few feet from the chimney of the Roberges' property before snagging the power lines and crashing. According to Mr. Roberge, the winds may have played a role, which would not be unusual for Mr. Ferland's various manoeuvres observed on August 10, 2001.

On the other hand, Mr. Renaud, a former bush and charter pilot and former flight instructor, said in cross-examination that the limits of an aircraft similar to the one flown by Mr. Ferland were not exceeded by 30-knot winds. Mr. Renaud believes that the pilot, however, must take the wind factor into account, as it can affect the stability and speed of the aircraft. It is therefore important to properly assess the wind direction using visual references or the aircraft's turn coordinator to properly measure the drift caused by the winds, before beginning an initial approach into the wind. It is suggested that an initial approach be made at 1,000 feet, followed by a second, with a tailwind, at 500 feet. Mr. Lafleur, chief instructor at A.T.L., teaches his students to make an initial approach at 1,000 feet followed by a second at 200/300 feet. Mr. Ferland went right into an initial approach at about 200 or 300 feet on arriving from the direction of Québec City.

Mr. Renaud also testified that Mr. Ferland told him, during a telephone conversation, that he did not intend to land on the surface prepared for him at 185 Chemin Saint-Laurent, on August 10, 2001, as it was too short. Asked to round out his version of the events in a letter, Mr. Ferland did not provide Mr. Renaud with any further information. Mr. Nobert, for his part, testified that Mr. Ferland, according to what he said when giving his statement, had no intention of landing on the strip prepared at 185 Chemin Saint-Laurent, but gave no further explanation.

Subsection 602.14(2) of the CARs provides certain exceptions, such as when conducting an approach or landing, to operating an aircraft at a distance of less than 500 feet. Paragraph 602.14(2)(b) of the CARs should not, however, be interpreted in such a way as to [translation] "immunize"^[1] the pilot against any proceeding on the pretext that he is conducting an approach or landing. The manoeuvres in question must be executed in a professional, reasonable and "calculated" manner.

I accept from the testimonies of Mr. Roberge and Ms. Lavoie that the aircraft flown by Mr. Ferland made three overflights at a low altitude at distances of less than 500 feet, including a first time observed at about 300 feet. I also accept the testimonies of Messrs. Renaud and Lafleur as to the need to assess first and foremost the landing surface and wind direction by flying over at an altitude of at least 1,000 feet prior to an initial approach. Mr. Roberge pointed out that strong northwest winds had been blowing in the Baie-Saint-Paul area throughout the day of August 10, 2001. A preliminary assessment of the wind direction by the pilot was all the more warranted and necessary, which Mr. Ferland obviously did not do. In the circumstances, I am convinced that Mr. Ferland did not make use of all his expertise to execute the approach of aircraft C-GPCV over the Roberges' property in order to land on a previously prepared strip. He therefore cannot invoke the exceptions provided in paragraph 604.12(2)(b) of the CARs.

DETERMINATION

The Minister has proven, on a balance of probabilities, the offence mentioned in the Notice of Assessment of Monetary Penalty issued May 22, 2002, and the assessment of the penalty of \$500 is confirmed.

Suzanne Racine
Member
Civil Aviation Tribunal

^[1] *Minister of Transport v. Daniel Joseph Annand*, CAT File No. P-2367-33.