

Citation: *Patrice Caissy v. Canada (Minister of Transport)*, 2017 TATCE 29 (review)

Date: 2017-09-28

Docket: MQ-0454-37

MoT File No.: Q20160719-305-01363

IN THE MATTER OF the review hearing requested by Patrice Caissy, with respect to a contravention of subsection 46(2) and section 87 of the *Canada Shipping Act, 2001*, S.C. 2001, c. 26, as alleged by the Minister of Transport.

BETWEEN:

PATRICE CAISSY, Applicant

and

MINISTER OF TRANSPORT, Respondent

[Official English translation]

Before: Yves Villemaire

Heard in: Campbellton, New Brunswick, on July 20, 2017

For the Applicant: Self-represented

For the Respondent: Martin Forget

REVIEW DETERMINATION AND REASONS

Held: The Minister of Transport's decision to impose a monetary penalty is upheld. The Minister has proven, on a balance of probabilities, that the applicant violated subsection 46(2) and section 87 of the *Canada Shipping Act, 2001*. However, the monetary penalties are reduced to \$1,250 each.

The total amount of \$2,500 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

I. BACKGROUND

[1] On August 9, 2016, the Minister of Transport (Minister) issued a Notice of Violation to the applicant, Patrice Caissy, for a contravention of subsection 46(2) and section 87 of the *Canada Shipping Act, 2001*. The Minister imposed a total monetary penalty of \$3,250 on the applicant.

[2] Schedule A to the Notice of Violation states the following:

[translation]

	Violation	Penalty
1	<p>On or about August 24, 2015, in Baie-des-Chaleurs, in the province of Quebec, Patrice Caissy, being the owner of a vessel, namely vessel 6C4715 "L'Épervière", failed to have it registered under Part 2 of the <i>Canada Shipping Act, 2001</i>, in contravention of subsection 46(2) of said Act.</p> <p>In particular, Mr. Caissy used his pleasure craft for carrying passengers.</p> <p>Patrice Caissy is thus liable for the administrative monetary penalty set out in section 11 of Part 1 of the Schedule to the <i>Administrative Monetary Penalties and Notices (CSA 2001) Regulations</i>.</p>	\$1,625.00
2	<p>On or about August 24, 2015, in Baie-des-Chaleurs, in the province of Quebec, Patrice Caissy was employed on board a Canadian vessel, namely the pleasure craft bearing licence number 6C4715 and called "L'Épervière", in a position for which a certificate is required under Part 3 of the <i>Canada Shipping Act, 2001</i>, without holding such a certificate, thus violating section 87 of the Act.</p> <p>In particular, Patrice Caissy was the master of a 9.14-metre craft carrying two passengers while holding a Pleasure Craft Operator Card (PCOC), whereas what was required was a Master, Limited for a Vessel less than 60 Gross Tonnage certificate of competency.</p> <p>Patrice Caissy is thus liable for the administrative monetary penalty set out in section 26 of Part 1 of the Schedule to the <i>Administrative Monetary Penalties and Notices (CSA 2001) Regulations</i>.</p>	\$1,625.00

[3] On October 7, 2016, Patrice Caissy filed a request for review with the Transportation Appeal Tribunal (Tribunal) of Canada with respect to the aforementioned Notice of Violation.

[4] The review hearing was held in Campbellton on July 20, 2017. Mr. Caissy represented himself, and the Minister of Transport was represented by Martin Forget.

II. STATUTES, REGULATIONS AND POLICIES

[5] Section 2 of the *Canada Shipping Act, 2001* defines a "passenger" as:

2 a person carried on a vessel by the owner or operator, other than:

(a) a person carried on a Safety Convention vessel who is

(i) the master, a member of the crew or a person employed or engaged in any capacity on board the vessel on the business of that vessel, or

(ii) under one year of age;

(b) a person carried on a vessel that is not a Safety Convention vessel who is

- (i) the master, a member of the crew or a person employed or engaged in any capacity on board the vessel on the business of that vessel, or
- (ii) a guest on board the vessel, if the vessel is used exclusively for pleasure and the guest is carried on it without remuneration or any object of profit;

[6] Subsections 46(1) and 46(2) of the *Canada Shipping Act, 2001* state:

46(1) Unless it is exempted under the regulations, a vessel must be registered under this Part if it:

- (a) is not a pleasure craft;
- (b) is wholly owned by qualified persons; and
- (c) is not registered, listed or otherwise recorded in a foreign state.

46(2) Every owner of a vessel that is required by subsection (1) to be registered under this Part shall ensure that it is so registered.

[7] Section 87 of the *Canada Shipping Act, 2001* states as follows:

87 Every person who is employed on board a Canadian vessel in a position in respect of which a certificate is required under this Part shall hold the certificate and comply with its terms and conditions.

[8] Subsection 15(1) of the *Transportation Appeal Tribunal of Canada Act* states as follows:

15(1) Subject to subsection (2), the Tribunal is not bound by any legal or technical rules of evidence in conducting any matter that comes before it, and all such matters shall be dealt with by it as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

III. PRELIMINARY ISSUES

[9] The parties informed me that, following a brief pre-hearing conference, they are in agreement on the principal facts, i.e. the absence of the registration certificate required for the vessel and the absence of the certificate of competency required for the master.

[10] The Minister's representative suggested that, since the applicant does not deny the violations, the hearing should be limited to the amount of the penalties only. The applicant agreed with the suggestion, and I note that in his request for review he contests only "the amount of the violation".

[11] The two penalties amount to \$1,625 each, exceeding the minimum of \$1,250 set by the *Administrative Monetary Penalties and Notices (CSA 2001) Regulations*.

[12] Subsection 15(1) of the *Transportation Appeal Tribunal of Canada Act* states that the Tribunal can act as informally as the circumstances and considerations of fairness and natural justice permit. In that spirit, I informed the unrepresented applicant that his testimony on the specific facts of the case might enable him to raise extenuating circumstances that would justify reducing the penalty to the minimum amount set by the Regulations.

[13] The applicant stated that he would in fact like to present his version of the facts, which includes specific circumstances to be considered, despite his admission of the violations. I therefore declare that for the rest of the hearing I will keep the agreement between the parties in mind.

IV. ELEMENTS TO BE PROVEN

[14] In order to prove the first violation, the Minister must show that on or about August 24, 2015:

- a. Patrice Caissy was the owner of the vessel called *L'Épervière*.
- b. The vessel was subject to subsection 46(2) of the *Canada Shipping Act, 2001*.
- c. The vessel was used for carrying passengers without being properly registered.

[15] In order to prove the second violation, the Minister must show that on or about August 24, 2015:

- a. The vessel called *L'Épervière* was used for carrying passengers.
- b. Patrice Caissy was employed on board the vessel in the position of master without holding the certificate required under section 87 of the *Canada Shipping Act, 2001*.

V. EVIDENCE

A. Minister

Annie Larouche

[16] Inspector Larouche testified that her office had sent Mr. Caissy a warning letter on September 12, 2011 (Exhibit M-1). This letter concerned Mr. Caissy's intention of using the vessel *L'Épervière* to carry passengers even though he did not have either the required certificate of competency for himself or the required vessel registration certificate. She stated that the violations in this case were identical to the ones for which Mr. Caissy had received a Notice of Violation in 2011.

[17] Inspector Larouche demonstrated that the Notice of Violation issued on August 9, 2016 (Exhibit M-2) described the same violations as those referred to above, and that the penalties amounted to \$1,625. She stated that the 30-percent increase from the minimum monetary penalty of \$1,250 set out in the *Administrative Monetary Penalties and Notices (CSA 2001) Regulations* was due to an internal Transport Canada policy on repeat offences.

[18] Inspector Larouche said that Mr. Caissy did not possess the required certificate of competency, namely that of Master, Limited for a Vessel less than 60 Gross Tonnage. She demonstrated this using the report on the candidate's status showing that on August 8, 2016, Mr. Caissy had no certificate (Exhibit M-3, page 1). The report did, however, record that the MEDA2 – Small Passenger Vessel Safety and ROC-MC Restricted Operator Certificate – Maritime Commercial courses had been taken in March and May 2016 respectively.

[19] On cross-examination, at Mr. Caissy's request, Inspector Larouche described the events that led to the alleged violations. She said she went to Carleton-sur-Mer with a colleague—Mathieu Guay—to determine whether *L'Épervière* was illegally carrying passengers. She said that when they walked around the docks near *L'Épervière*, Mr. Caissy offered her and Mr. Guay a two-hour cruise for \$30 per person.

[20] Inspector Larouche said she interpreted Mr. Caissy's words as a request for payment of \$60 for a two-hour cruise for two people. She said she did not see Mr. Caissy's words as a request for a voluntary contribution to the cost of operating the boat, as he suggests. She admitted that Mr. Caissy may have made such a request, but that was not how she understood it.

[21] Inspector Larouche said that she and Mr. Guay submitted requests for reimbursement of \$30 each as personal expenses for their cruise on board *L'Épervière* on August 24, 2015. For both claims, the "Unobtainable" box was ticked on the lost receipt declaration form (Exhibit M-4).

B. Applicant

Patrice Caissy

[22] Mr. Caissy started by describing the circumstances that gave rise to the "Warning letter" dated September 12, 2011 (Exhibit M-1). He said he wanted to help out a friend, Réjean Cyr, who was unable to offer a cruise as planned with his vessel, *Merlot*, one Friday morning (July 29, 2011, according to Exhibit M-1). Mr. Caissy said he had decided to use his own vessel, *L'Épervière*, for practical reasons, and that he was getting ready to set out when Inspector Cédric Baumelle arrived.

[23] Mr. Caissy said that he was preparing to go out with family and friends and that no one had paid him "anything at all" for the cruise. He said Inspector Baumelle recommended that he obtain the required certificate of competency and have his vessel certified as "commercial." He admitted that he "probably" would have set out with his vessel on July 29, 2011, had Inspector Baumelle not intervened.

[24] Mr. Caissy also said that Inspector Robert Fecteau had made the same recommendation to him in 2012 about the need to comply with the law if he wanted to carry passengers, while at the same time assuring him that he was satisfied Mr. Caissy was not carrying passengers.

[25] Mr. Caissy said he had decided to take the necessary steps to be able to carry passengers with *L'Épervière*. However, he explained that due to an accident he could only go through with that plan a few years later, altering his vessel and registering for training courses in 2016. He said he was continuing these steps.

[26] With regard to the incident on August 24, 2015, Mr. Caissy said that when he took Ms. Larouche and Mr. Guay on board, he did not set a two-hour time limit or demand payment of \$30 per person. He said that when he goes out with family or friends, he does not know beforehand if he will be back at the marina in one, two or five hours, and that the same was true on the day in question. He also said that he could have gone to sea by himself on August 24, 2015, but that he decided to take Ms. Larouche and Mr. Guay along.

[27] Mr. Caissy said he did tell Ms. Larouche that if she wanted to help him cover "repairs or maintenance of the boat, there would be no problem". He said that when they gave him \$20 bills he did not count them, but put them in his pocket and only figured out how much they had given him later on.

[28] On cross-examination, Mr. Caissy said that in 2012, after the warning letter was sent, Inspector Fecteau was watching him to make sure he did not carry passengers illegally, and that the inspector said he was satisfied that that was not the case.

VI. ARGUMENTS

A. Minister

[29] The Minister's representative submitted that, since Mr. Caissy has admitted to both offences, only the penalty amount remains to be considered. He argued that, under subsection 46(2) of the *Canada Shipping Act, 2001*, the minimum monetary penalty for a first offence is \$1,250. He said the same minimum amount applies to the second offence under section 87 of the same Act.

[30] The Minister's representative said that the penalty amounts had been increased by 30 percent pursuant to the departmental policy on repeat offences. He claimed that the warning letter (Exhibit M-1) proved that Mr. Caissy was preparing to make an illegal sea cruise, thereby committing an offence identical to the one described in this case, i.e. on August 24, 2015.

[31] The Minister's representative emphasized that Mr. Caissy only started the professional training referred to above in 2016, a year after the incident in question. He claimed that Mr. Caissy clearly understood that he did not have the required certificate of competency at the time of the incident and was deliberately carrying passengers illegally. He presumed, further, that it was the Notice of Violation of August 9, 2016, that had pushed Mr. Caissy to start taking steps so that he could carry passengers legally.

[32] The Minister's representative argued that I should give more weight to Inspector Larouche's testimony than to Mr. Caissy's conflicting testimony about the alleged request for payment, since the inspector had nothing to gain by submitting her version of the facts.

[33] The Minister's representative noted that the Tribunal does not have the authority to impose a penalty lower than the minimum set out in the *Administrative Monetary Penalties and Notices (CSA 2001) Regulations*. In support of his argument, he cited the remarks of Ms. Kirby in *M/V JOE CASEY v. Canada (Minister of Transport)*, 2017 TATCE 16, as well as my remarks at the start of this hearing.

B. Applicant

[34] Mr. Caissy submitted that he does not charge a fixed price to take passengers on cruises on board his craft. He said that he never asked for money when he took family and friends out to sea. He submitted that he was often offered small amounts to cover things like the cost of fuel.

[35] Mr. Caissy said that on August 24, 2015, he took Inspectors Larouche and Guay on board, saying "*it was a ... lovely couple of hours ... I could have gone out alone but ... I decided to take them with me*".

[36] Mr. Caissy said he is working on registering his vessel and obtaining a certificate of competency that would allow him to carry passengers in the future. He alleged that he is waiting to be certified before setting cruise lengths and prices.

[37] In response to the member, Mr. Caissy said he considered Inspector Baumelle's letter of September 12, 2011 (Exhibit M-1) as a warning. He added that he understood that he was being given a chance and encouraged to obtain the documents he needed in order to carry passengers.

VII. ANALYSIS

[38] It has been established beyond question that, on or about August 24, 2015:

- a. Patrice Caissy was the owner of the vessel called *L'Épervière*.
- b. This vessel was subject to subsection 46(2) of the *Canada Shipping Act, 2001*.
- c. This vessel was used for carrying passengers without being properly registered.
- d. Patrice Caissy was employed as master on board the vessel without possessing the certificate required under section 87 of the *Canada Shipping Act, 2001*.

[39] The parties also agreed on the content of the evidence submitted by the Minister's representative. Mr. Caissy stated that he had not given a receipt and agreed that the lost receipt declaration forms (Exhibit M-4) submitted by Inspectors Larouche and Guay were nothing more than requests for reimbursement submitted to their employer.

[40] The testimonies differed considerably on one important issue, namely what prompted the \$60 payment. Mr. Caissy said he did not specify either the length or the price of the cruise. He said he merely suggested that he would have no objection to accepting a voluntary contribution to the expenses of the boat. Inspector Larouche said she did not see Mr. Caissy's words as a request for a voluntary contribution to the cost of operating the boat, but as a set price for a trip with a set length of time.

[41] I find the claim requests for \$30 (Exhibit M-4) not to be conclusive proof. These documents can only be used to support the statement that the inspectors submitted claims for reimbursement of the money allegedly paid to Mr. Caissy. However, since the \$60 payment is not contested, this subject is not relevant.

[42] The reason for the payment would be relevant, however, if the payment was just a tip freely offered to cover the expenses of the boat. Section 2 of the *Canada Shipping Act, 2001* describes a "passenger" as "*a person carried on a vessel by the owner or operator*", and subparagraph (b)(ii) excludes from that definition "*a guest on board the vessel, if the vessel is used exclusively for pleasure and the guest is carried on it without remuneration or any object of profit*".

[43] The exclusion set out in subparagraph (b)(ii) is not limited to the free carriage of a guest—it also covers the carriage of a guest "*without ... any object of profit*". That would make it possible to accept a tip without breaking the law.

[44] Mr. Caissy's testimony that the August 24, 2015, cruise was lovely suggests that this could be a case of guests being carried on a vessel used exclusively for pleasure. Moreover, it is impossible to say what would have happened had the inspectors left the boat without paying.

[45] The Minister's representative asked me to give more weight to Inspector Larouche's testimony about the request for payment because she had nothing to gain in this case.

However, Inspector Larouche said she had received "*instructions to just get evidence that he was indeed carrying passengers*". This statement leads me to believe that the inspectors chose to understand Mr. Caissy's words in such a way as to accomplish the objective of their mission. In this case, Mr. Caissy admitted the violation, so that issue is inconsequential.

[46] Mr. Caissy appeared to contradict himself about the warning letter. In his testimony, he first said he had interpreted the document as an encouragement to obtain the required certificates, not as a warning. But later he said that he understood he was committing a violation when he took passengers on cruises without having the required documents. I therefore accept the argument of the Minister's representative that Mr. Caissy had been given a warning.

[47] I acknowledge that the Tribunal does not have the authority to impose a penalty lower than the minimum set out in the *Administrative Monetary Penalties and Notices (CSA 2001) Regulations*.

[48] The Ministry of Transport's internal policy allows penalties under the *Administrative Monetary Penalties and Notices (CSA 2001) Regulations* to be increased by 30 percent for repeat offenders. I must therefore determine whether the facts established in this case justify such an increase.

[49] At first glance, the letter dated September 12, 2011 (exhibit M-1), which I consider to be a warning, appears to support the argument that there was a repeat offence. However, in giving evidence, Mr. Caissy was ambiguous about what that document meant.

[50] Mr. Caissy testified that he had cooperated with the Transport Canada inspectors from the very first contact. He admitted that he had to take the necessary steps to be able to carry passengers legally. He has in fact started to take these steps. He said that he intends to offer cruises for set lengths of time and set prices once he has the documents he needs.

[51] Mr. Caissy said he does not demand payment but does accept voluntary contributions. Inspector Larouche admitted that Mr. Caissy may have suggested a voluntary contribution, even if that was not the way she understood his words.

[52] The ambiguity of Mr. Caissy's communications, whether deliberate or not, prevents me from finding that the facts concerning his behaviour following the events of July 29, 2011, and August 24, 2015, are accurate. On a balance of probabilities, I find that in this case, the facts as a whole demonstrate extenuating circumstances, which do not justify increasing the monetary penalty as for repeat offenders.

[53] Moreover, I am of the opinion that the departmental policy of increasing monetary penalties by 30 percent for repeat offenders does not apply in this case. The French-language dictionary *Le Petit Robert* (2000 edition) defines recidivism as [TRANSLATION] "*the commission of a new offence punishable by a conviction, after having been irrevocably sentenced for an offence of the same nature*".

[54] The September 12, 2011, warning letter (Exhibit M-1) to Mr. Caissy is only an allegation of a violation, and the Minister decided not to start any kind of legal proceedings at that time, for example by sending something like a Notice of Violation. Since we cannot read the September 12, 2011, letter as being a conviction of Mr. Caissy, the violations committed on August 24, 2015, cannot be repeat offences.

VIII. DETERMINATION

[55] The Minister of Transport's decision to impose a monetary penalty is upheld. The Minister has proven, on a balance of probabilities, that the applicant violated subsection 46(2) and section 87 of the *Canada Shipping Act, 2001*. However, the monetary penalties are reduced to \$1,250 each.

The total amount of \$2,500 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

September 28, 2017

(Original signed)

Yves Villemaire
Member