



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Alexander Ross v. Canada (Minister of Transport)*, 2019 TATCE 25 (Review)

TATC File No.: O-4409-16

Sector: Aviation

BETWEEN:

Alexander Glenn Albert Ross, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard in: Barrie, Ontario, on January 23 and Toronto, Ontario, on January 31, 2019

Before: Charles S. Sullivan, Member

Rendered: June 19, 2019

REVIEW DETERMINATION

Held: Pursuant to subsection 7.1(7) of the *Aeronautics Act*, the Transportation Appeal Tribunal of Canada confirms the Minister of Transport's decision to cancel the applicant's Private Pilot Licence on the grounds that the Minister is of the opinion that the public interest and, in particular, the aviation record of the document holder, warrants it.

I. BACKGROUND

[1] On March 16, 2018, the Minister of Transport issued a Notice of Cancellation Private Pilot Licence (Notice) to the applicant, Alexander Ross, pursuant to paragraph 7.1(1)(c) of the *Aeronautics Act* (Act). The Notice cited the Minister's concerns regarding Mr. Ross' ability to conduct flights safely as the holder of Private Pilot Licence (PPL) Number PA831876 and the fact that Transport Canada (TC) had been actively working with Mr. Ross for several months to address a series of aviation-related safety concerns and contraventions.

[2] The Notice set out 23 grounds for the cancellation of Mr. Ross' PPL. These grounds concerned Mr. Ross' compliance with various provisions of the *Canadian Aviation Regulations* (CARs) relating to issues such as the condition of equipment, aircraft maintenance requirements, compliance with journey log requirements, flying without insurance, and two licence suspensions. The effective date of the cancellation as set out in the Notice was March 27, 2018.

[3] On April 3, 2018, Mr. Ross filed a request for review before the Transportation Appeal Tribunal of Canada (the Tribunal or TATC).

[4] The hearing was held on January 23, 2019 in Barrie, Ontario. Due to inclement weather, the applicant's legal counsel was unable to attend, and the applicant elected to represent himself and proceed with the hearing. The hearing was called to order at 10:30 a.m. The parties completed their respective case presentations at 7:15 p.m. and indicated they would each require a significant amount of time to make closing arguments. On the recommendation of the presiding member, both parties agreed to adjourn for the day and reconvene on January 31, 2019, at 222 Bay Street, Toronto, Ontario.

[5] On January 24, 2019, the TATC registrar served a formal Notice of Hearing by registered mail to both parties, which indicated that the hearing would reconvene on January 31, 2019 at 9:00 a.m. at 222 Bay Street, Suite 900, Toronto, Ontario.

[6] The applicant, Mr. Ross, did not appear at the appointed time on the morning of January 31, 2019. The Tribunal delayed reconvening while attempts were made by the Tribunal and the Minister's representative to confirm the applicant's whereabouts and intentions. After a considerable delay, the member reconvened the hearing at 11:00 a.m. and invited the Minister's representative to make his closing argument. At 12:30 p.m., the applicant had not appeared and the hearing was adjourned.

II. PRELIMINARY MOTION

[7] The Minister made a preliminary motion to include evidence related to events and activities that occurred after the Minister's decision had been made to cancel the PPL and after the Notice had been served. Both parties were given a full opportunity to make representations with respect to the events leading to the Minister's decision. Based on submissions from both parties, the Tribunal ruled that it would consider evidence related to events and activities that

occurred in the time leading up to the Minister's decision to cancel the applicant's PPL, and not after.

III. DISCUSSION AND ANALYSIS

[8] The Tribunal was required to consider the following issue: was the Minister's decision to cancel the applicant's PPL justified in the public interest, and, in particular, based on the applicant's aviation record, as per paragraph 7.1(1)(c) of the *Act*?

[9] The respondent adduced evidence from 19 exhibits and testimony from two witnesses. The Minister's first witness was Tanya Clyde, a Technical Team Lead for Civil Aviation Airworthiness with Transport Canada's regional office in Toronto. The Minister's second witness was Larry Lipiec, a Civil Aviation Inspector with the Enforcement Branch of Transport Canada.

[10] The applicant adduced evidence from the testimony of two witnesses. The applicant's first witness was Scott Ross, the father of the applicant. The applicant was self-represented and testified on his own behalf. The applicant did not introduce any exhibits.

[11] With regard to the Minister's decision to cancel the applicant's PPL, paragraph 7.1(1)(c) of the *Act* states: if the Minister decides to suspend, cancel or refuse to renew a Canadian aviation document on the grounds that the Minister is of the opinion that the public interest and, in particular, the aviation record of the document holder, warrants it, the Minister shall, by personal service or by registered or certified mail, notify that person of the Minister's decision. The Minister's decision to cancel the applicant's PPL is discretionary, and justification rests with the Minister. After hearing the case, the Tribunal may confirm the Minister's decision or refer the matter back to the Minister for reconsideration pursuant to subsection 7.1(7) of the *Act*.

[12] The Minister's first witness, Ms. Clyde, provided a detailed narrative of her involvement with the applicant dating back to July 2016 and the non-compliance issues she was required to handle as a TC Civil Aviation Inspector on behalf of the Minister. Ms. Clyde testified that Mr. Ross was involved in acquiring derelict aircraft and preparing them for resale. Ms. Clyde stated that her inspections revealed issues where Mr. Ross' aircraft repair and maintenance activities were non-compliant with the *CARs*, which resulted in regulatory concerns and public complaints such as altered technical records, maintenance actions not being signed off by the proper authority, and aircraft being operated that did not meet technical airworthiness standards.

[13] Ms. Clyde testified that on January 19, 2018, TC sent Mr. Ross a formal letter (Exhibit M-2) advising him that based on his pattern of behaviour of non-compliance and unsafe practices, the Minister was considering the cancellation of his PPL. TC offered Mr. Ross an opportunity to provide a response to the 13 contraventions and violations outlined in the letter. Mr. Ross subsequently participated in a meeting at TC's regional office in Toronto in February 2018, which revealed to Ms. Clyde and TC's Director of Civil Aviation that Mr. Ross' pattern of behaviour of non-compliance and unsafe practices was not about to change and that he would continue to use his interactions with TC to mislead TC inspectors.

A. Which grounds can be used to determine this case?

[14] The respondent introduced Exhibit M-3, the Minister's Notice of Cancellation PPL, dated March 16, 2018, which cited 23 grounds that informed the Minister's decision to cancel the applicant's PPL. The respondent also introduced a series of Enforcement Management System (EMS) reports that provided further details on these grounds. When reviewing the list of 23 grounds cited in the Minister's Notice (Exhibit M-3), the Tribunal noted that on the date the cancellation came into effect, several contraventions were pending ongoing TC investigations and TATC review hearings. Details of pending matters are as follows:

(a) Nine contraventions were pending TC investigations, of which three were later withdrawn due to lack of evidence and two due to duplication with other enforcement actions:

- i. Paragraph 14 of the Notice, EMS Case Report 97797.
- ii. Paragraph 15 of the Notice, EMS Case Report 97539, violation withdrawn due to lack of evidence.
- iii. Paragraph 16 of the Notice, EMS Case Report 97539, violation withdrawn due to lack of evidence.
- iv. Paragraph 17 of the Notice, EMS Case Report 97794, violation withdrawn due to lack of evidence.
- v. Paragraph 18 of the Notice, EMS Case Report 97546.
- vi. Paragraph 19 of the Notice, EMS Case Report 97798.
- vii. Paragraph 20 of the Notice, EMS Case Report 97799, matter withdrawn due to duplication with EMS 97798 (paragraph 19) above.
- viii. Paragraph 21 of the Notice, EMS Case Report 97796, matter withdrawn due to duplication with EMS 97797 (paragraph 14) and EMS 97798 (paragraph 19) above.
- ix. Paragraph 22 of the Notice, EMS Case Report 97795.

(b) Three contraventions were pending TATC review hearings at the time the cancellation came into effect:

- i. Paragraph 9 of the Notice, EMS Case Report 96856 (Exhibit M-13), dated March 22, 2017. The Minister later withdrew the contravention due to the lack of evidence.
- ii. Paragraph 10 of the Notice, EMS Case Report 96856 (Exhibit M-13), dated March 22, 2017. The matter is now before the TATC.
- iii. Paragraph 11 of the Notice, EMS Case Report 94876 (Exhibit M-14), dated May 15, 2017. The matter is now before the TATC.

(c) One contravention was dated after the Notice came into effect:

- i. Paragraph 23 of the Notice, EMS Case Report 97781, cited an event that occurred on March 31, 2018, as a grounds for cancelling the applicant's PPL. The respondent advised the Tribunal that the date of

March 31, 2018 was an error and should have read March 13, 2018. The Tribunal concluded that this alleged contravention would have been a pending and unresolved matter at the time of the Minister's decision to cancel the pilot license.

[15] Consistent with the Tribunal's ruling on the respondent's motion at the beginning of the hearing, the Tribunal set aside ongoing and unresolved matters. The Tribunal made a special note that six contraventions were eventually withdrawn due to a lack of evidence or duplication of enforcement actions. While the Tribunal heard that certain matters cited in the Minister's letter later resulted in penalties, the Tribunal can give little or no weight to this evidence as the matters were pending at the time of the cancellation. The Tribunal maintains that it would not be reasonable or fair to hold pending matters against the applicant.

[16] The remaining 10 contraventions (Exhibits M-5 to M-12, M-15 and M-16) were considered by the Tribunal, as they were issued before the cancellation came into effect and were not pending TC investigations or TATC review hearings. Pursuant to section 7.8 of the *Act*, the applicant did not file a request for review before the TATC for any of the contraventions listed below. The 10 contraventions described by Mr. Lipiec as grounds for the Minister's PPL cancellation are as follows:

(a) Exhibit M-5, EMS Case Report 92395, which corresponds to paragraph 1 of the Notice, stated: on or about July 14, 2016, the applicant flew aircraft C-GBQN with a known defect (a cracked engine block), in contravention of subsection 605.03(1) of the *CARs*, which resulted in an engine failure shortly after takeoff at Billy Bishop Airport, Toronto Island. TC enforcement action was a Notice of Suspension PPL for 30 days, dated March 14, 2017, and served on the applicant on March 20, 2017. This contravention is further described below.

(b) Exhibit M-6, EMS Case Report 92394, which corresponds to paragraph 2 of the Notice, stated: on or about July 14, 2016, the applicant conducted a flight in aircraft C-GBQN without insurance, in contravention of subsection 606.02(8) of the *CARs*. TC enforcement action was a Notice of Assessment of Monetary Penalty of \$5,000 (third insurance-related violation) dated March 17, 2017, and served on the applicant on March 20, 2017. TC was required to obtain a TATC certificate for non-payment of the penalty. The applicant subsequently paid the sum of \$2,500 but still owed \$2,500 on the penalty amount at the time of the hearing.

(c) Exhibit M-7, EMS Case Report 93537, which corresponds to paragraph 3 of the Notice, stated: on or about April 18, 2017, the applicant failed to surrender a Canadian aviation document (PPL PA831876) following a suspension, in contravention of section 103.03 of the *CARs*. The applicant surrendered his PPL nine days late, on April 27, 2017. TC enforcement action was a Notice of Assessment of Monetary Penalty of \$1,000 dated July 10, 2017, which was served on the applicant on July 11, 2017. The applicant did not pay the penalty, and TC was required to obtain a TATC certificate for payment of \$1,000, which the applicant still owed at the time of the hearing.

- (d) Exhibit M-8, EMS Case Report 92626, which corresponds to paragraph 4 of the Notice, stated: on or about April 29, 2016, the applicant conducted a flight in aircraft C-GAIQ when the aircraft did not meet airworthiness directives, in contravention of subsection 605.84(1) of the *CARs*. TC enforcement action was a Notice of Assessment of Monetary Penalty of \$1,000 dated March 16, 2017 and served on March 20, 2017. The applicant paid in full the monetary penalty of \$1,000.
- (e) Exhibit M-9, EMS Case Report 92627, which corresponds to paragraph 5 of the Notice, stated: on or about April 29, 2016, the applicant conducted a takeoff in aircraft C-GAIQ when the aircraft, after undergoing maintenance, was not certified by a maintenance release, in contravention of subsection 605.85(1) of the *CARs*. TC enforcement action was a Notice of Assessment of Monetary Penalty of \$1,000 dated January 25, 2017, and served on the applicant on January 26, 2017. The applicant paid in full the monetary penalty of \$1,000.
- (f) Exhibit M-10, EMS Case Report 92628, which corresponds to paragraph 6 of the Notice, stated: on or about April 29, 2016, the applicant conducted a flight in aircraft C-GAIQ when the aircraft did not conform to its approved maintenance schedule, in contravention of subsection 605.86(1) of the *CARs*. TC enforcement action was a Notice of Assessment of Monetary Penalty of \$1,000 dated January 27, 2017, and served on the applicant on January 30, 2017. TC was required to obtain a TATC certificate for the collection of the AMP. The applicant paid in full the monetary penalty of \$1,000.
- (g) Exhibit M-11, EMS Case Report 92572, which corresponds to paragraph 7 of the Notice, stated: on or about April 29, 2016, the applicant conducted a flight in aircraft C-GAIQ without insurance, in contravention of subsection 606.02(8) of the *CARs*. TC enforcement action was a Notice of Assessment of Monetary Penalty of \$1,000 (first insurance-related violation) dated January 13, 2017, and served on the applicant on January 19, 2017. TC was required to obtain a TATC certificate for the collection of the AMP. The applicant paid in full the monetary penalty of \$1,000.
- (h) Exhibit M-12, EMS Case Report 92725, which corresponds to paragraph 8 of the Notice, stated: on or about June 12, 2016, the applicant conducted a flight in aircraft C-FBJP without insurance, in contravention of subsection 606.02(8) of the *CARs*. TC enforcement action was a Notice of Assessment of Monetary Penalty of \$2,500 (second insurance-related violation) dated March 13, 2017, and served on the applicant on March 20, 2017. TC was required to obtain a TATC certificate for the collection of the AMP. The applicant subsequently paid in full the monetary penalty of \$2,500.
- (i) Exhibit M-15, EMS Case Report 95451, which corresponds to paragraph 12 of the Notice, stated: on or about August 6, 2017, the applicant conducted a flight in aircraft C-FBRY and was observed northeast of Kenora, Ontario entering a mandatory frequency area without notification, in contravention of section 602.103 of the *CARs*. TC enforcement action was a Notice of Assessment of Monetary Penalty of \$750 dated January 5, 2018, and served on the applicant on

January 15, 2018. The applicant did not pay the penalty. TC has secured a TATC certificate for payment of \$750, which was still owed at the time of the hearing.

(j) Exhibit M-16, Notice of Suspension for Non-Payment of Monetary Penalty dated January 5, 2018, which corresponds to paragraph 13 of the Notice. The suspension took effect on February 5, 2018 and remains in effect until all outstanding monetary penalties are paid in full. Pursuant to section 7.21 of the *Act*, the Minister suspended the applicant's PPL for non-payment of monetary penalties, an outstanding amount totalling \$5,000. TC secured TATC certificates for payment of the unpaid penalties totalling \$5,000, which still had not been paid at the time of this hearing.

B. Did the applicant's aviation record justify cancelling his PPL?

[17] The cancelation of a PPL would be a decision taken by the Minister in the public interest and aviation safety. In her testimony, Ms. Clyde described an aviation incident that was brought to her attention by a CADORS (Civil Aviation Daily Occurrence Reporting System) report: Mr. Ross experienced an engine failure shortly after takeoff at Toronto Island Airport in July 2016. TC's investigation (Exhibit M-5) revealed that Mr. Ross had purchased the aircraft "as is" and that it did not meet airworthiness standards due to known defects. When interviewed by TC, Mr. Ross stated that he was not aware of any aircraft defects and that he had not received any information from the Aircraft Maintenance Engineer (AME) who was familiar with the aircraft. However, TC's investigation revealed that the defects were known to the AME, the previous owner, and the Approved Maintenance Organization (AMO) and were documented in the aircraft records. When presented with these findings, Mr. Ross admitted that he had, in fact, been aware of the defects when he acquired the aircraft and before he flew the aircraft from the Toronto Island Airport. The incident led to TC enforcement action against the applicant, as described above.

[18] Ms. Clyde described a second series of events, which corresponds to Exhibit M-4 paragraphs 4, 5, 6 and 7, where Mr. Ross had acquired an aircraft that, according to Mr. Ross, was being used for spare parts. Mr. Ross made entries in the aircraft journey log book showing that the aircraft had been partially disassembled and provided information to TC that the aircraft was no longer in service. After receiving a report of safety concerns from the aircraft's previous owner related to the aircraft still flying, TC located the aircraft fully assembled in Parry Sound, Ontario. TC discovered that Mr. Ross had made false statements and false journey log book entries and had been operating the aircraft without liability insurance, when it was non-compliant with airworthiness standards.

[19] The Tribunal noted three infractions related to flying without liability insurance on three separate occasions. The first violation occurred in April 2016 in aircraft C-GAIQ (Exhibit M-11), the second in June 2016 in aircraft C-FBJP (Exhibit M-12), and the third in July 2016 in aircraft C-GBQN (Exhibit M-6). Scott Ross, the father of the applicant, testified that he assumed that his son was covered under his COPA (Canadian Owners and Pilots Association) insurance policy. He stated that he spoke to COPA about the insurance policy and paid an additional fee for his son, however, he did not realize that the policy would not follow his son from aircraft to aircraft. In response to a question from the respondent, the witness stated that he did not, at any time, ask COPA to confirm that his son was covered under his insurance policy. The applicant

did not provide any information or evidence to support Scott Ross' assumption that his son, the applicant, had liability assurance through his father's COPA insurance policy.

[20] One troubling infraction (Exhibit M-15) involved the applicant transiting through a mandatory frequency (MF) area near Kenora, Ontario without making the necessary radio transmissions on the mandatory frequency. This infraction was reported to TC by NAV Canada through CADORS. By way of explanation, the applicant testified that as he approached Kenora from the northeast, he was uncertain with the MF area and control zone, which resulted in him transiting through the MF area without establishing any communication on the MF frequency, thus avoiding contact with the local air traffic agency. This type of infraction could have been seen as a one-time honest mistake; however, the applicant's pattern of behaviour of non-compliance and unsafe practices made it reasonable for TC inspectors to carefully examine the applicant's actions, which resulted in enforcement action.

[21] Two other enforcement actions taken by the Minister against Mr. Ross were the suspension of his PPL for non-payment of monetary penalties (Exhibit M-16) and a Notice of Assessment of Monetary Penalty for not surrendering his suspended PPL (Exhibit M-7). The Minister was also required to secure certificates from the TATC for the collection of unpaid monetary penalties totalling \$5,000, which Mr. Ross still owed at the time of the TATC review hearing. Mr. Ross advised the Tribunal that he was in the process of negotiating a payment arrangement for unpaid monetary penalties with TC; however, no information was offered to support his claim.

[22] The final four infractions committed by the applicant related to flying aircraft with the following maintenance issues: 1) the aircraft had a known defect that compromised airworthiness (Exhibit M-5), 2) the aircraft did not meet airworthiness directives (Exhibit M-8), 3) the aircraft had not been certified by a maintenance release after having undergone maintenance (Exhibit M-9), and 4) the aircraft did not conform to its approved maintenance schedule (Exhibit M-10).

[23] With regard to airworthiness and maintenance infractions, Mr. Ross testified that he sometimes carried out maintenance on his aircraft himself and that he did not always agree with the AME with whom he worked in maintaining his aircraft. Mr. Ross described a strained relationship he had with one of his aviation mechanics. From Mr. Ross' testimony, the Tribunal concluded that the applicant's approach to aircraft maintenance and flying operations differed from that of the air maintenance personnel involved in maintaining his aircraft.

[24] Mr. Ross testified that on one occasion, he took steps to "cover [his] tracks" so as to hide his activities from TC inspectors and investigators. The Tribunal learned from the Minister's witnesses that when dealing with TC inspectors and investigators, the applicant could not be relied upon to give full and accurate accounts of the facts as they related to his aviation activities. Ms. Clyde testified that the applicant was deceptive when dealing with TC, which made it necessary for TC officials to challenge the veracity of information provided by the applicant. According to TC, Mr. Ross could not be relied upon to give full and accurate accounts of the status of his aircraft or important events and activities that were being investigated by TC.

[25] The Tribunal learned from Ms. Clyde's testimony that once TC started looking into Mr. Ross' aviation records and activities, they identified several serious safety concerns related to

non-compliance with airworthiness standards, falsifying aircraft records, failure to comply with journey log book requirements, and, as stated above, flying without insurance. The Tribunal also learned through Mr. Ross' own testimony that he had not been providing full and accurate accounts of his aviation activities to TC inspectors, which caused further concern for TC officials assigned to look into Mr. Ross' aviation activities.

[26] In response to the Minister's case against him, Mr. Ross described his flying career and commented on the contraventions presented by the respondent. Mr. Ross stated that he became a student pilot at the age of 14, was awarded his PPL at 17, accumulated 2,600 flying hours over seven years, and had owned 85 aircraft. He advised the Tribunal that when he tried to hide his aviation activities from TC inspectors, TC officials became more interested in his file, which led to the contraventions cited in the Minister's Notice.

[27] The Tribunal found the evidence and testimony offered by the Minister's witnesses, Ms. Clyde and Mr. Lipiec, to be clear, credible and compelling. The Tribunal agreed that the 10 contraventions reviewed by the Tribunal, which form part of the applicant's aviation record, represented a troubling pattern of behaviour of non-compliance and unsafe practices. The Tribunal further agreed that efforts made by TC officials to work with Mr. Ross to address the aviation-related safety and non-compliance issues had little effect on his behaviour. Most troubling to the Tribunal was testimony from witnesses and the applicant, himself, that related to Mr. Ross' false statements, false journey log book entries, and actions to hide his errant aviation activities and deliberately mislead TC officials as they carried out their inspections and investigations. The Tribunal finds that in a relatively short aviation career, Mr. Ross has developed a record in which each of the violations presented by the Minister relates directly to matters of aviation safety. The case presented by the respondent clearly supports the Minister's decision to cancel Mr. Ross' PPL, which the Tribunal finds was based on the public interest and aviation safety.

IV. DETERMINATION

[28] Pursuant to subsection 7.1(7) of the *Aeronautics Act*, the Transportation Appeal Tribunal of Canada confirms the Minister of Transport's decision to cancel the applicant's Private Pilot Licence on the grounds that the Minister is of the opinion that the public interest and, in particular, the aviation record of the document holder, warrants it.

June 19, 2019

(Original signed)

Charles S. Sullivan

Member

Appearances

For the Minister: Eric Villemure

For the Applicant: Alexander Ross, Self-represented