



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Alexander Ross v. Canada (Minister of Transport)*, 2019 TATCE 37 (Review)

TATC File No.: O-4387-37

Sector: Aviation

BETWEEN:

Alexander Ross, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard in: Barrie, Ontario, on January 25, 2019

Before: Blaine R. Beaven, Member

Rendered: September 4, 2019

REVIEW DETERMINATION AND REASONS

Held: The Minister of Transport has failed to prove, on a balance of probabilities, that Alexander Ross violated subsection 606.02(8) of the *Canadian Aviation Regulations*. The Notice of Assessment of Monetary Penalty is dismissed.

I. BACKGROUND

[1] In a Notice of Assessment of Monetary Penalty (Notice) dated January 17, 2018, the Minister of Transport (Minister) alleged that Mr. Alexander Ross contravened subsection 606.02(8) of the *Canadian Aviation Regulations (CARs)*.

[2] Schedule A provides the details of the alleged violation as follows:

On or about March 22, 2017, at approximately 13:00 local time, at or near Parry Sound Area Municipal airport CNK4, Ontario, you Alexander Ross as an aircraft owner not referred to in paragraph 606.02(2)(a), (b), or (c) of the Canadian Aviation Regulations (CARs) operated an aircraft bearing registration C-FVQJ when you had not subscribed for liability insurance covering risks of public liability in an amount that was not less than:

- a) \$100,000, when the maximum permissible take-off weight of the aircraft was 1 043 kg (2,300 pounds) or less;

Alexander Ross was thereby contravening subsection 606.02(8) of the CARs.

[3] The Minister imposed an administrative monetary penalty in the amount of \$5,000.

[4] On February 5, 2018, Mr. Ross requested a review by the Transportation Appeal Tribunal of Canada (Tribunal).

[5] The hearing was held before me on January 25, 2019 in Barrie, Ontario. The Minister's representative called one witness. The applicant represented himself and testified on his own behalf.

II. ANALYSIS

[6] This case turns on a question of statutory interpretation; what is the meaning of the words "is registered in Canada" in subsection 606.02(1) of the *CARs*?

A. Legal framework

[7] Pursuant to subsection 7.7(1) of the *Aeronautics Act*, the Minister can issue a monetary penalty if they believe on reasonable grounds that a person has contravened a designated provision.

[8] In this case, the designated provision at issue is subsection 606.02(8) of the *CARs*. I will be making references to the following excerpts from section 606.02:

606.02 (1) This section applies to every owner of an aircraft that is registered in Canada, or registered pursuant to the laws of a foreign state and operated in Canada, who is not required to subscribe for liability insurance in respect of the aircraft pursuant to section 7 of the Air Transportation Regulations.

(2) Subject to subsection (3), none of the following aircraft owners shall operate an aircraft unless, in respect of every incident related to the operation of the aircraft, the owner has subscribed for liability insurance covering risks of injury to or death of passengers in an amount that is not less than the amount determined by multiplying \$300,000 by the number of passengers on board the aircraft:

- (a) an air operator;
- (b) the holder of a flight training unit operator certificate; or

(c) the operator of a balloon in which fare-paying passengers are carried on board pursuant to Subpart 3.

[...]

(8) No aircraft owner not referred to in paragraph (2)(a), (b) or (c) shall operate an aircraft unless, in respect of every incident related to the operation of the aircraft, the owner has subscribed for liability insurance covering risks of public liability in an amount that is not less than

(a) \$100,000, where the maximum permissible take-off weight of the aircraft is 1 043 kg (2,300 pounds) or less;

[9] Subsection 7.91(4) of the *Aeronautics Act* provides that the burden of establishing the contravention lies with the Minister.

B. Elements to prove

[10] The Minister must prove each of the elements of this violation on a balance of probabilities. The elements are distilled from the applicable legislation and the *CARs*, as well as the allegation contained in the Notice. I find the elements in this case to be as follows:

- a. Date: On or about March 22, 2017;
- b. Time: approximately 13:00 hours;
- c. Location: at or near Parry Sound Area Municipal Airport (CNK4), Ontario;
- d. Alexander Ross was an aircraft owner not referred to in paragraphs 606.02(2)(a), (b) or (c) of the *CARs*;
- e. Alexander Ross operated an aircraft bearing registration C-FVQJ;
- f. C-FVQJ had a maximum permissible take-off weight of less than 1,043 kg (2,300 lbs);
- g. Alexander Ross had not subscribed for liability insurance in an amount equal to or greater than \$100,000; and
- h. C-FVQJ was an aircraft registered in Canada, or registered pursuant to the laws of a foreign state and operated in Canada.

C. Proof of elements (a) through (g)

[11] The Minister provided evidence on its case through its witness, Mr. Vincent Veiga, as well as through a number of documents that he identified and which were filed as exhibits.

[12] Mr. Veiga, a Civil Aviation Enforcement Investigator with Transport Canada, testified that he had been employed in this capacity since January 2015 and that he had previously worked for the department as an Aircraft Maintenance Engineer from 1992 to 2015. Prior to that time, he had been employed in other areas of aviation. Mr. Veiga testified he was a holder of a private pilot licence, with multi-engine, VFR over-the-top, and night ratings.

[13] Mr. Veiga was the primary investigator with regard to the violation before the Tribunal. He received the initial detection notices and supporting material from Transport Canada Inspector Jeff Langford, and also sought out evidence in the course of his investigation. He detailed much of this in his case report tendered as Exhibit M-1.

[14] The Minister tendered various other documents during the hearing, including the aforementioned detection notices, the insurance policy of the prior owner, journey log excerpts, emails, and transfer of ownership documents. These were all accepted as exhibits and I will make reference to them at later points in this determination.

[15] Mr. Veiga testified in a straightforward manner. Where he provided me with facts, I did accept them. As Mr. Veiga was not qualified as an expert witness in either the applicability of the CARs or insurance policies, I did not accept his opinions on those matters.

[16] Mr. Ross testified on his own behalf. He provided evidence as to his difficulties in registering the aircraft, and concerning his past troubles with aircraft insurance and prior violations for flying without same.

[17] Mr. Ross also provided copies of insurance documents and attempted to argue that liability insurance was in force at the time of the flight in question. His interpretation of the insurance documents was at times tenuous or improbable, and strayed from concrete evidence with respect to the existence or not of insurance coverage.

[18] Where Mr. Ross' evidence was corroborated by some other evidence, I accepted it. Where he provided his opinion on the application of the insurance documents, I did not.

[19] Opinion evidence from either witness as to the applicability or not of an insurance policy was unhelpful, as the Tribunal is required to review the documents and make that determination on its own.

[20] Regardless of my concerns about the witnesses and their evidence, I have no hesitation in finding that elements (a) through (g) were proven, based on the evidence provided by both the Minister and Mr. Ross. I will briefly review the evidence that satisfied proof on each of those elements.

(1) *Proof of date, time, and location - elements (a) to (c)/ Proof that Alexander Ross operated C-FVQJ - element (e)/ Proof of maximum permissible take-off weight of C-FVQJ - element (f)*

[21] The Minister filed excerpts from the journey log of C-FVQJ as Exhibit M-6. On Page A of M-6 are two entries showing the date of March 22, 2017, recording flights conducted by "A. Ross" from CNK4 to CNJ4, and CNJ4 to CYQA, with take-off times of 1:00 and 2:30, which I took to mean 13:00 and 14:30 respectively.

[22] The Minister filed the bill of sale and transfer of ownership documents as Exhibit M-8, both having been completed on March 3, 2017 regarding a sale and purchase of C-FVQJ, from a "Stephen Howard" to an "Alex Ross" or "Alexander Glenn Ross".

[23] Given the proximity in dates of the completion of the documents in M-8 and the flights referred to in M-6, I conclude that "A. Ross", as noted in the logbook entries, is Mr. Ross.

[24] Mr. Ross did not contest that he had made these flights. During cross-examination he confirmed that he did not fly the aircraft again after March 22, 2017, and until he had sorted out the insurance and registration issues.

[25] The tombstone page of M-6 contains information about the Cessna 150G (C-FVQJ); specifically that the maximum gross weight, which in this instance I equate with the maximum permissible take-off weight, is 1,600 lbs.

[26] Section 28 of the *Aeronautics Act* provides that an entry in a journey log is proof of the matters stated therein absent evidence to the contrary. Mr. Ross provided no evidence to the contrary and did not contest the fact that he made these flights.

[27] As a result, I find that on a balance of probabilities, elements (a) to (c), (e) and (f) have been proven.

(2) *Proof that Alexander Ross was an aircraft owner not referred to in paragraphs 606.02(2)(a), (b) or (c) of the CARs - element (d)*

[28] The *CARs* require certain classes of aircraft owners to have a specific amount of liability insurance. The three types of aircraft owners listed in subsection 606.02(2) are:

- a. an air operator;
- b. the holder of a flight training unit operator certificate; or
- c. the operator of a balloon in which fare-paying passengers are carried on board pursuant to Subpart 3.

[29] Mr. Veiga testified that Mr. Ross did not operate the flight under an air operator certificate, that he was not the holder of a flight training unit operator certificate, and that the aircraft in question was not a balloon.

[30] Mr. Ross did not provide evidence or argue that he was any of these types of owners. He confirmed that he had purchased the aircraft from Stephen Howard and considered himself to be the owner of the aircraft.

[31] A considerable amount of argument was heard on the definition of “owner”, specifically around the difference between a “title owner” - a definition not found in the legislation - and a “registered owner”.

[32] A “registered owner” is defined in section 3 of the *Aeronautics Act* as:

registered owner, in respect of an aircraft, means the person to whom a certificate of registration for the aircraft has been issued by the Minister under Part I or in respect of whom the aircraft has been registered by the Minister under that Part;

[33] I was provided no evidence that satisfied me that Alexander Ross was a registered owner. No certificate of registration was tendered into evidence to show that aircraft C-FVQJ was ever registered in his name.

[34] The provision in question, section 606.02 of the *CARs*, describes culpability to an “owner of an aircraft”, and not a registered owner, so that does not end the inquiry. It must be determined if Mr. Ross was, in law, an owner of the aircraft in question.

[35] The *CARs* define “owner” as follows at section 101.01:

owner, in respect of an aircraft, means the person who has legal custody and control of the aircraft.

[36] Legal custody and control is not defined in the *Aeronautics Act*, nor is it defined in section 101.01 of the *CARs*. It is described in subsection 202.35(3) of the *CARs*, which states:

202.35 (3) For the purposes of this Division, an owner has legal custody and control of a Canadian aircraft when the owner has complete responsibility for the operation and maintenance of the aircraft.

[37] I will be delving further into this division of the *CARs* when considering element (h), however it is clear that the legislator, in drafting the *CARs*, provided a description of legal custody and control to include responsibility for the operation and maintenance of the aircraft.

[38] Exhibit M-8 shows that Mr. Ross purchased the aircraft from Stephen Howard in March 2017. In an email captured in Exhibit M-7, from Mr. Ross to Inspector Langford on April 12, 2017 at 11:05 AM, Mr. Ross states “[I] am indeed the owner of the aircraft”. Mr. Ross testified that he owned the aircraft, and was responsible for its operation and maintenance. I conclude that while Mr. Ross may not have been a “registered owner”, he was the “owner” of C-FVQJ.

[39] I find that element (d) has been proven on a balance of probabilities, in that Alexander Ross was an aircraft owner not listed in paragraphs 606.02(2)(a), (b), or (c) of the *CARs*.

(3) *Proof that Alexander Ross had not subscribed for liability insurance in an amount equal to or greater than \$100,000 - element (g)*

[40] Given that the maximum gross weight of C-FVQJ was 1,600 lbs, Mr. Ross was required to have liability insurance in force, in an amount equal to or greater than \$100,000, prior to operating C-FVQJ.

[41] In the M-7 email thread between Inspector Langford and Mr. Ross, on April 12, 2017 at 6:12 PM, Mr. Ross writes:

... also the aircraft is still insured under [S]teve because he forgot to take the insurance off the aircraft as [I] was talking to him today and he gave you the policy so that should cover that, however [I] also have liability insurance on the aircraft ...

[42] Anticipating such an argument from Mr. Ross regarding the aircraft still being insured under the prior owner, the Minister filed the insurance policy of Stephen Howard as Exhibit M-5.

[43] This document establishes that Stephen Howard was the named insured, that the policy was in effect from June 28, 2016 to June 28, 2017, and that it covered aircraft registration C-FVQJ, with liability coverage in the amount of \$1,000,000.

[44] This policy also has a section entitled “Approved Pilots”, which states:

Approved Pilots Coverage under this Policy only applies when the pilot flying the aircraft is:

- a. Angus Benderavage (C-FVQJ)
- b. Stephen Howard (C-FVQJ)

[45] Clearly the policy is not in effect if any person other than the named pilots is flying the aircraft. Mr. Ross would not have any coverage under this policy while operating the aircraft, regardless if Stephen Howard had neglected to cancel it.

[46] Mr. Veiga investigated the claim by Mr. Ross that he had liability insurance in place by contacting the Canadian Owner and Pilots Association (COPA) VIP Aviation Insurance Program provider, Magnes Aviation.

[47] I was not provided any satisfactory explanation as to what led Mr. Veiga to contact COPA/Magnes, as it does not appear he was ever told by Mr. Ross during his investigation that

COPA/Magnes provided him with insurance. I infer that Mr. Veiga's knowledge of their involvement as a potential insurance provider was informed by Mr. Ross' enforcement history of three prior violations with regard to liability insurance, and that in some of those cases Mr. Ross had relied on insurance provided by COPA/Magnes. In his testimony, Mr. Ross confirmed his use of COPA/Magnes as an insurer.

[48] COPA/Magnes provided confirmation in an email on December 14, 2017, exhibited as M-9, stating that liability coverage was not in place from March 18 to 24, 2017. The email indicates that coverage was effective for that aircraft from May 15, 2017 to June 6, 2017, and a certificate of insurance (although not for C-FVQJ) was stapled to that email as part of M-9.

[49] The onus is on the Minister to prove that Mr. Ross did not have liability insurance in effect on March 22, 2017. This equates to having to prove a negative. As this proof is on a balance of probabilities, it would be near impossible for the Minister to contact every insurance provider that exists and ask if Mr. Ross has a policy with them.

[50] I also note that during the investigation, both Inspector Langford and Mr. Veiga communicated with Mr. Ross and requested proof that he had liability insurance, which Mr. Ross declined to provide. I note he was under no obligation to provide this proof.

[51] At the hearing, Mr. Ross provided an insurance policy in the name of Scott Ross, his father, which was effective April 29, 2016. This was exhibited as A-5. Initially, only a portion of this document was filed as A-4, however the entire document was eventually filed.

[52] In Exhibit A-5, the page noted as 1 of 3 and entitled "Aviation (Private, Business and Pleasure) Insurance Declarations", states in section 1 that Scott Ross is the named insured. Under section 8 "Approved Pilot(s)", the following is written:

a. Coverage under this Policy only applies when the pilot in command of the aircraft is:

Scott Ross, Alex Ross,

[53] Section 11, on page 2 of 3, indicates that in relation to C-GFHT (a Cessna 150), liability coverage is provided in the amount of \$1,000,000.

[54] Mr. Ross relied on this policy to argue that because he is a named pilot on his father's policy, he can fly any other plane and the liability insurance attaches. Mr. Ross specifically pointed to page 11 of 17 of the aircraft insurance policy documents (Exhibits A-4 and A-5), and Section 3d, of which the pertinent parts are as follows:

Non-Owned Aircraft Liability - Provided the Insured has purchased liability coverages, then subject to all terms, conditions and exclusions, those coverages purchased are extended to apply to the use of any aircraft by the Insured in the event a claim is made or a suit is brought against the Insured provided that:

- i. The aircraft is not leased to or owned in whole or in part by, or registered in the Insured's name;
- ii. The number of seats in the aircraft does not exceed the maximum number of seats in an Aircraft insured by this Policy;

[55] Mr. Ross argued that he was named as an "approved pilot" on this policy; that it was in force at the time; that the number of seats in C-FVQJ did not exceed the number of seats of the aircraft in the policy (both being Cessna 150 aircraft); and that he therefore had liability insurance coverage equal to or greater than \$100,000.

[56] There are a number of flaws in this argument. It is important to note that Section 3d clearly applies to the “Insured”. The policy defines “Insured” on page 3 of 17 as the “name or names shown in Section 1 of the Declarations or as described by the Policy”.

[57] As noted above, the only name shown in Section 1 of the Declarations was Scott Ross. He is the person who meets the definition of Insured.

[58] As well, the first condition of Section 3d of the policy would disqualify Mr. Ross from having liability insurance attach, since aircraft C-FVQJ was owned in whole by him as established by his testimony admitting same.

[59] I do not accept the position of Mr. Ross that the insurance policy filed as Exhibit A-5 provided him liability coverage on March 22, 2017, given that he was named as an “approved pilot” and not as an “insured”.

[60] I accept that the insurance policy of Stephen Howard exhibited as M-5 does not provide coverage to Mr. Ross. I accept that Mr. Veiga requested insurance information from COPA/Magnes and discovered no coverage was in place during the relevant time period. I accept that Mr. Ross was offered the opportunity to provide proof of coverage to Mr. Veiga, and did not. The steps that the Minister has taken to prove that they could ascertain no insurance coverage in place lead me to conclude that none was in place. Mr. Ross may rebut this conclusion; however, I find that Mr. Ross has not provided me with evidence that proves he did have liability insurance in effect on March 22, 2017.

[61] For all those reasons, I find that the Minister has proven on a balance of probabilities that Mr. Ross had not subscribed for liability insurance in an amount equal to or greater than \$100,000 at the time he operated C-FVQJ on March 22, 2017.

[62] I find that elements (a) through (g) have been proven on a balance of probabilities.

D. Proof of element (h) - that C-FVQJ was an aircraft registered in Canada, or registered pursuant to the laws of a foreign state and operated in Canada

[63] Subsection 606.02(1) of the *CARs* clearly states that the section applies to every owner of an aircraft that is registered in Canada, or registered pursuant to the laws of a foreign state and operated in Canada. This creates a condition that must be met before any of the subsections under section 606.02, including subsection 606.02(8), can apply.

[64] Subsection 606.02(1) uses the words “is registered”. I find this paramount. It does not use the past tense “was registered” or “has been registered”, or the future tense “is eligible to be registered”, but uses the present tense “is”.

[65] The Minister did not tender into evidence a certificate of registration for C-FVQJ, from any time period, to prove that it had ever been registered.

[66] Mr. Ross supplied evidence of the registration status of C-FVQJ in Exhibit A-1, the aircraft mark history. In tendering this exhibit, he advised it was a printout from the Transport Canada website which has the database of all aircraft registered in Canada. It appears to the Tribunal to be a printout from the Transport Canada website and was accepted into evidence as such.

[67] The printout indicates that the certificate of registration for C-FVQJ was held by a Sandra Jimmerskog from 2011-10-25 until 2016-08-10, when it was cancelled. A certificate of registration was not issued again until 2017-10-02 in the name of Kevin Polanski.

[68] On the face of it, it appears that on March 22, 2017, the registration was cancelled. When I raised this with the Minister's representative during his closing argument, the Minister's position was that a "cancelled certificate of registration" still means the aircraft is registered.

[69] This requires the Tribunal to consider what it means for an aircraft to be registered.

[70] The CARs provide definitions for "certificate of registration" and "registered" at section 200.01:

Part II - Aircraft Identification and Registration and Operation of a Leased Aircraft by a Non-Registered Owner

200.01 In this Part,

[...]

certificate of registration, means a certificate of registration issued pursuant to section 202.25 and includes a certificate of registration issued by a contracting state or a foreign state that has an agreement in force with Canada that allows an aircraft that is registered in that foreign state to be operated in Canada;

[...]

registered, in respect of an aircraft, means registered pursuant to sections 202.16 and 202.17 or pursuant to the laws of a foreign state

[71] Section 202.16 of the CARs states:

202.16 The Minister, on receipt of an application in accordance with the *Aircraft Marking and Registration Standards*, shall register an aircraft where the owner of the aircraft

(a) is qualified to be the registered owner of a Canadian aircraft pursuant to section 202.15; and

(b) meets the requirements set out in those standards.

[72] Section 202.15 simply requires a person registering an aircraft to be a Canadian citizen and at least 16 years of age.

[73] Section 202.17 describes the types of registration that are available as being state, commercial or private, and states that registrations can be made provisionally, on a temporary basis, on a continuing basis, or on an interim basis.

[74] Section 202.25 requires the Minister to issue a certificate of registration upon registering an aircraft and states that the different types of certificates are provisional, temporary, continuing, or interim.

[75] Section 202.69 establishes that the register of aircraft, commonly referred to as the *Canadian Civil Aircraft Register (Register)*, is to be maintained by the Minister with respect to Canadian aircraft that have been issued a continuing or temporary certificate of registration.

[76] Returning to section 202.35, the CARs dictate that upon any transfer of legal custody and control, the certificate of registration is cancelled. There are steps provided by which an interim certificate of registration can be obtained.

[77] Subsection 202.36(2) indicates that if legal custody and control is transferred, an interim certificate of registration is provided, and then legal custody and control is transferred a second time, before the issuance of a continuing certificate of registration, the aircraft is not deemed to be registered with an interim registration.

[78] I pause here to note that both “registered” and “certificate of registration” are defined separately, and while their use in the legislation is very intricately linked to each other, they are separate and distinct notions and cannot be used interchangeably.

[79] Subsection 202.64 indicates that even if a certificate of registration is cancelled and the legal custody and control is transferred to a person ineligible to be a registered owner, the Minister may continue to keep the aircraft particulars in the register. This grants the Minister a wide discretion to determine when an aircraft is, or is not, registered.

[80] Based on my review of the *CARs*, it is this Tribunal’s interpretation that an aircraft can still be registered, in the sense of being in the *Register*, even with a certificate of registration that is cancelled.

[81] I heard evidence from both witnesses that Mr. Ross faced significant hurdles when he attempted to obtain a certificate of registration for this aircraft, as it appears that Transport Canada did not recognize Stephen Howard as the registered owner and was thus unable to transfer the registration of the aircraft. This issue was also captured in the email exchange in Exhibit M-7, specifically where Inspector Langford writes the following to Mr. Ross:

There is still no record of a bill of sale or the application for the [certificate of registration] from yourself at Transport Canada. You did indicate to Katherine Ashworth, the support staff at Transport Canada, that you purchased the aircraft three weeks ago from a Sandra, but we have not seen that bill of sale. All we have is the current status of the aircraft showing the [certificate of registration] to Sandra Jimmerskog, which has been cancelled.

[82] It appears from the evidence provided by both witnesses that Mr. Ross purchased an aircraft from a person who was not the registered owner. Transport Canada refused to issue a certificate of registration to Mr. Ross due to this fact and until he had a declaration from Ms. Jimmerskog that the transfer was lawful. Only then was Transport Canada willing to issue a certificate of registration.

[83] The onus is on the Minister to convince me on a balance of probabilities that C-FVQJ was an aircraft that was registered in the relevant time period. This could be accomplished by entering into evidence the entry in the *Register* relating to that aircraft. Unfortunately, this was not done in this case.

[84] That does not end the matter. As with any applicant, Mr. Ross is entitled to enter exhibits and provide evidence to the Tribunal. As noted above, he entered Exhibit A-1 and testified that it was from the Transport Canada website that houses the database showing the registration history of C-FVQJ, and I accepted it as same.

[85] No evidence was provided by Mr. Ross or the Minister as to whether the Transport Canada website is, in fact, the *Register*. It may involve historical but not current information from the *Register*. It may include inaccurate information on what is in the *Register*. It may be an exact representation of the information in the *Register*. I simply do not know. This is a gap in the evidence that it would be inappropriate for me to attempt to fill.

[86] I am not satisfied, on a balance of probabilities, that the Minister has proven that at the time in question, C-FVQJ was an aircraft registered in Canada, and thus required liability insurance.

[87] A similar question was resolved in the same way in the Civil Aviation Tribunal (appellate level) decision of *Donald Frederick Seymour v. Minister of Transport*, CAT File No. W-1246-02, where the appeal panel found as follows:

Subsection 5(1) of the Air Regulations Series VI, No. 10 states:

No owner or operator of a private aircraft shall operate that aircraft unless there is on board that aircraft proof that the liability insurance subscribed for in accordance with these Regulations is being carried.

The lengthy analysis pertaining to the 1st four counts need not be undertaken here.

In keeping with the generally accepted practice of reading legislation as a whole, we perused the whole of Air Regulations, Series VI, No 10.

Section 3, at Application, states:

3. These Regulations apply to every owner and every operator of a private aircraft that is

(a) registered in Canada, where that owner or operator is not required to subscribe...
(Emphasis added)

As the Member found that the aircraft was not registered, the regulation has no application.

[88] Although I am not bound by jurisprudence from the Civil Aviation Tribunal and the legislation has since been amended, the issue is clearly on point and I agree with the reasoning in that case. As I have done in this determination, the appeal panel found that an element of the violation was that the aircraft must be, at the pertinent time, registered.

[89] I have also considered *Minister of Transport v. James Edward Garrow*, CAT File No. O-2193-37, both the review determination and the appeal decision affirming same. I note that the review member in that case upheld the violations, which involved the operation of an aircraft that was both not registered and not insured. This finding was not overturned by the appeal panel.

[90] While prior Tribunal decisions are not binding upon me, they may be persuasive. However, I do not find the *Garrow* decision persuasive or helpful. That case involved a respondent, Mr. Garrow, who attended on the first date of the hearing and raised part way through the hearing that he did not know about his procedural rights. He then failed to attend on the second date of the hearing. The review member did not explain his reasons for finding that the violations were proven; he did not ascertain what the elements of the violations were or how the evidence applied to same, and there appears to be no consideration if unregistered aircraft are required to hold liability insurance.

[91] Mr. Garrow appealed the review determination and then did not attend before the appeal panel. This appears to be the reason the appeal was dismissed.

[92] As I have established that section 606.02 of the *CARs* only applies to aircraft that are registered, and the Minister failed to prove that the aircraft was registered, element (h) has not been made out. Accordingly, the Minister has failed to prove the violation on a balance of probabilities.

E. Due diligence

[93] In the event that I am incorrect in finding that the Minister has failed to prove the violation on a balance of probabilities, I will address the potential due diligence defence that could apply based on the evidence presented.

[94] Section 8.5 of the *Aeronautics Act* provides the statutory authority for the applicant to raise a defence of due diligence, and places upon him the onus, on a balance of probabilities, of demonstrating he exercised all due diligence in the circumstances. The Supreme Court of Canada has stated that in considering such a defence, a decision maker must consider the reasonableness of the actions of the applicant and whether or not all due care has been taken (*R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299).

[95] In the case before me, Mr. Ross' reliance on insurance policies was a moving target. He informed Inspector Langford that he was covered under Stephen Howard's policy. He attempted to persuade me he was covered under his father's policy. He conceded in cross-examination that he did not contact COPA/Magnes to confirm his coverage prior to flying C-FVQJ on March 22, 2017.

[96] On top of all that, Mr. Ross had been sanctioned for this same offence three times prior. He described these incidents in his examination-in-chief, and in one of those instances he had relied on his father's insurance policy to his detriment.

[97] I cannot accept that Mr. Ross was even close to being diligent in his actions regarding his liability insurance coverage in this case. If I had found that the violation was made out, I would not accept a due diligence defence.

F. Sanction

[98] In the event I am incorrect in my assessment of the law in this case, I will also now address the appropriateness of the sanction.

[99] Mr. Veiga testified as to the Transport Canada policy of how the appropriate amount of monetary penalty is applied; i.e. for a first violation offence, 20 per cent of the maximum penalty; for a second offence, 50 per cent of the maximum penalty; and for a third and subsequent offence, 100 per cent of the maximum penalty.

[100] In this case, the maximum penalty was \$5,000. Given Mr. Ross' violation history with this same subsection of the *CARs* on three prior occasions, I do find that the Minister was reasonable in applying a penalty of \$5,000 and would not modify that. There were no mitigating circumstances that I heard that would suggest a lesser amount is appropriate.

III. CLOSING REMARKS

[101] I want to be very clear that this determination does not condone the actions of Mr. Ross on March 22, 2017. He was not diligent in making certain he had liability insurance, nor was he diligent in ensuring the aircraft was properly registered prior to flying it.

[102] Mr. Ross exhibited a cavalier attitude towards his regulatory requirements and presented explanations that were tenuous and difficult to corroborate.

[103] The Tribunal notes that it is entirely possible that Mr. Ross violated subsection 202.13(2) of the *CARs*, which states:

202.13 (2) Except as otherwise authorized under subsection 202.14(1) or 202.43(1), no person shall operate an aircraft in Canada unless it is registered in Canada, in a contracting state or in a foreign state that has an agreement in force with Canada that allows an aircraft that is registered in that foreign state to be operated in Canada.

[104] As the Minister's representative rightly conceded, I am unable to take any action on other violations I may find to have occurred from the evidence I accept, as that would be unfair to Mr. Ross.

IV. DETERMINATION

[105] The Minister of Transport has failed to prove, on a balance of probabilities, that Alexander Ross violated subsection 606.02(8) of the *Canadian Aviation Regulations*. The Notice of Assessment of Monetary Penalty is dismissed.

September 4, 2019

(Original signed)

Blaine R. Beaven

Member

Appearances

For the Minister: Eric Villemure

For the Applicant: Self-represented