



## TRANSPORTATION APPEAL TRIBUNAL OF CANADA

**Citation:** *Alexandru Duru v. Canada (Minister of Transport)*, 2022 TATCE 7 (Review)

**TATC File No.:** Q-4616-33

**Sector:** Aviation

### BETWEEN:

**Alexandru Duru**, Applicant

- and -

**Canada (Minister of Transport)**, Respondent

[Official English translation]

**Heard by:** Videoconference on July 15, 2021

**Before:** Franco Pietracupa, Member

**Rendered:** February 3, 2022

### REVIEW DETERMINATION AND REASONS

**Held:** The Minister of Transport has proven, on a balance of probabilities, that the applicant, Catalin Alexandru Duru, contravened subsection 601.08(1) and section 603.06 of the *Canadian Aviation Regulations*. As such, the monetary penalty of \$2,250 is upheld.

The total amount of \$2,250 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 May 26, 2020, Transport Canada (TC) issued a Notice of Assessment of Monetary Penalty (Notice) to Catalin Alexandru Duru for alleged violations of subsection 601.08(1) and section 603.06 of the *Canadian Aviation Regulations (CARs)*. The total amount of the monetary penalty as set by the Minister of Transport (Minister) was \$2,250.

[2] Schedule A of the Notice stated:

1. On or about June 7, 2019, at approximately 10:45 a.m. (EDT), at the site of the Eurêka Festival between De la Commune Street and Promenade du Vieux-Port, Montreal QC, while operating an aircraft in Visual Flight Rules, you entered the Class C airspace of Pierre Elliott Trudeau International Airport without having received authorization from the appropriate air traffic control unit, thereby contravening subsection 601.08(1) of the *Canadian Aviation Regulations*.

Monetary Penalty: \$750

2. On or about June 7, 2019, at approximately 10:45 a.m. (EDT), at the site of the Eurêka Festival between De la Commune Street and Promenade du Vieux-Port, Montreal QC, you operated an aircraft during a special aviation event when you did not meet the eligibility requirements specified in the *Special Flight Operations Standards* and you were not authorized under the conditions set forth in a special flight operations certificate – special aviation event, thereby contravening section 603.06 of the *Canadian Aviation Regulations*.

Monetary Penalty: \$1,500

Total Monetary Penalty: \$2,250

[3] On June 4, 2020, the applicant requested a review hearing with the Transportation Appeal Tribunal of Canada (Tribunal). A review hearing was scheduled and carried out July 15, 2021 by videoconference.

## **II. ANALYSIS**

[4] The respondent adduced evidence through 14 exhibits and testimony from one witness. The respondent's witness was Yves Thibodeau, a civil aviation safety investigator with the Aviation Enforcement branch of Transport Canada.

[5] The applicant adduced evidence through nine exhibits. Mr. Duru represented himself and testified.

[6] Under section 7.7 of the *Aeronautics Act*, the Minister can assess a monetary penalty if an individual has contravened subsection 601.08(1) and section 603.06 of the *Canadian Aviation Regulations*. When this person is found to have committed the contravention, they are liable for the penalty. In this case, two provisions were alleged to have been contravened and a monetary penalty was assessed for both provisions. The contraventions will be reviewed separately.

[7] In accordance with subsection 7.91(4) of the *Aeronautics Act*, the Minister has the burden of proof to make its case and must therefore prove the key elements of the first alleged contravention under subsection 601.08(1) of the *CARS*.

[8] Subsection 601.08(1) of the *CARS* states that “no person operating a VFR aircraft shall enter Class C airspace unless the person receives a clearance to enter from the appropriate air traffic control unit before entering the airspace”.

[9] On the second contravention, and in accordance with subsection 7.91(4) of the *Aeronautics Act*, the Minister has the burden of proof to make its case and must therefore prove the key elements of the alleged contravention under section 603.06 of the *CARS*.

[10] Section 603.06 of the *CARS* states that no person shall operate an aircraft or permit an aircraft to be operated in a special aviation event unless the person operating the aircraft and the aircraft

- a. meet the eligibility requirements specified in section 623.06 of the *Special Flight Operations Standards*; and
- b. are authorized to do so in a special flight operations certificate-special aviation event.

[11] The Minister introduced Exhibit M-3, the Eurêka Festival event flyer. The Minister’s witness testified that the event agenda page for the Eurêka Festival indicated that on June 7, 2019 at 10:30 “Prouesses en planche volante” was scheduled as an event show. Furthermore, Mr. Thibodeau testified that in the same flyer, on page 10, a more detailed event synopsis indicated that the hoverboard event performed by Mr. Duru would take place not only on the Friday, June 7, but would also be repeated on the following Saturday and Sunday of the festival. Further information from this event flyer identifies the location and various events that will take place during the three-day festival.

[12] The Minister’s representative then introduced Exhibit M-2, the video of the actual hoverboard event. The Minister’s witness explained to the Tribunal the footage of the flying board being hand-controlled by Mr. Duru while on the board. He went on to explain that the hoverboard is seen lifting off above a crowd outdoors and then being propelled by the applicant over a water reservoir basin with the spectators alongside.

[13] Mr. Thibodeau described the aircraft as a hoverboard being propelled inflight via a series of propellers. He explained through Exhibit M-6, the *Canada Flight Supplement*, the exact location of the event and how it is located in Class C airspace. He explained to the Tribunal that this airspace is designated as such due to the proximity of Pierre Elliott Trudeau airport.

[14] The Minister’s witness explained the requirements to operate in this airspace. Among several technical requirements, permission and authorization must be requested prior to operating in this controlled airspace, according to the *Canada Flight Supplement*.

[15] Mr. Thibodeau introduced Exhibit M-7, concerning a special flight operations certificate (SFOC), which he explained would have been required by the applicant to conduct this event. This certificate is required if an individual wants to fly at a special aviation event. His investigation revealed that no such certificate was issued to Mr. Duru for this specific event.

[16] The Tribunal learned through the Minister's witness testimony that the flying board (hoverboard) used by the applicant could not be categorized as a remotely piloted aircraft system (RPAS), as the applicant claimed. The *CARs* defines an RPAS as a remote-controlled piloted aircraft and not one that is operated while the pilot operator is on the board.

[17] He continued to explain that the *CARs* also defines a small remotely piloted aircraft as weighing on takeoff not less than 250 grams to a maximum of 25 kilos. He went on to explain that a remotely piloted aircraft, as defined in subsection 101.01(1) of the *CARs*, is operated by a pilot that is NOT onboard the aircraft.

[18] Finally, the Minister introduced Exhibit M-13, *Canadian Aviation Regulations*, and explained that the hoverboard used by the applicant can only be defined as an aeroplane according to the definition in subsection 101.01(1) of the *CARs*.

[19] Mr. Duru provided to the Tribunal several videos including Exhibit R-2, which is a video of Mr. Duru operating the hoverboard at the Eurêka Festival. He testified that all precautions were taken as to the safety of the event.

[20] He went on to testify that his device is hand controlled while he is on the craft and that the board's propellers would in fact stop operating in less than a second should he cease to control the device (Exhibit R-1, Prop Test - time to stop (Video)). Further testimony revolved around the calculated distance that the flight board would travel should he need to carry out an emergency shutdown. He explained that the flight board would drop into the water and not injure or fall into the crowds on either side of the reservoir basin.

[21] Mr. Duru explained that he did try to receive authorization from Transport Canada for another event that was to take place in Quebec City in 2018. Exhibit R-5, Request for Permission, goes on to detail the hoverboard technical specifications, the distance from which it would operate from the crowds and the height that the hoverboard would reach. This request was sent to TC on October 11, 2018.

[22] Transport Canada ultimately denied this request (Exhibit R-6) on October 29, 2018. It however detailed in great length the required steps that the applicant had to undertake to hold hoverboard events going forward. Mr. Duru, in testimony, did not specifically explain why he did not undertake these steps other than to state that the bureaucratic approach by Transport Canada resulted in a slow response to his request. He also stated in testimony that he believed TC had forgotten his request.

[23] Mr. Duru testified that he does not believe Transport Canada is assessing his hoverboard correctly, that it cannot be defined as an aircraft, and as such, cannot be operated under the same conditions and regulations as an aircraft.

[24] The Tribunal should at this time also address two specific exhibits that the applicant entered as evidence. Mr. Duru explained that Exhibit R-7 details an email exchange between his company, Omni Hoverboards Inc., and Transport Canada, in which he is seeking the required flight permits and/or licenses to carry out hoverboard events. Exhibit R-8 details the fee paid to have TC evaluate and ultimately decide on what is required under *CARs* for him to legally carry out these hoverboard demonstrations.

[25] The Tribunal finds that both Exhibits R-7 and R-8 had been sent to Transport Canada in August 2019. These dates are after the alleged contraventions had occurred and are thus irrelevant to the present review. The Tribunal's mandate is to consider the specific events that occurred on June 7, 2019, and the regulations in existence at that time. What subsequently happened and the steps the applicant took after this date to adhere to regulations is not relevant.

[26] Before going any further, it is critical that the "hoverboard" that was used on June 7, 2019 be properly assessed in terms of its definition within existing regulations in the *CARs* at the time of the violations. The *Canadian Aviation Regulations*, Part 1 General Provisions, subsection 101.01(1), defines a remotely piloted aircraft as "a navigable aircraft, other than a balloon, rocket or kite, that is operated by a pilot who is not on board". Both videos submitted by the applicant and the Minister clearly show Mr. Duru on the hoverboard and controlling it, as he testified, via a handheld control mechanism.

[27] Also at subsection 101.01(1) of the *CARs*, an aeroplane is defined as "a power-driven heavier-than-air aircraft that derives its lift in flight from aerodynamic reactions on surfaces that remain fixed during flight". The term *heavier-than-air aircraft* means "an aircraft supported in the atmosphere by lift derived from aerodynamic forces". An aeroplane is therefore a type of aircraft according to the *CARs*.

[28] Video Exhibit R-2 shows the hoverboard take off vertically on a designated platform, gain altitude, then fly or glide to the end of the basin, turn, and return to land back on the platform, with all movements controlled by Mr. Duru via the hand remote. Exhibit R-5 (email correspondence with Transport Canada dated October 11, 2018) detailed the hoverboard as gaining approximately six metres in height.

[29] The applicant testified that the hoverboard is powered by eight individual propellers that he controls onboard the device. Based on the video and the definition in *CARs*, I find that the hoverboard in question meets the definition of an aeroplane, with all required regulatory obligations to meet when operated as such.

[30] The issue then for the Tribunal is this: did the applicant operate an aircraft in Class C airspace, in VFR conditions during a special aviation event, without the required permits, licenses and regulatory approval? I will review the key elements of both alleged contraventions separately, as set forth by the Minister.

**A. Contravention 1 – Section 601.08 of the *CARs***

- a. On or about June 7, 2019, at approximately 10:45 EST
- b. at the Eurêka Festival, between De la Commune Street and Promenade du Vieux-Port
- c. operated an aircraft in VFR (Visual Flight Rules)
- d. entered Class C airspace of Pierre Elliott Trudeau Airport without receiving appropriate clearance from ATC (Air Traffic Control)

[31] On the first two elements of the contravention, the Minister has proven on a balance of probabilities that the applicant was at the Eurêka Festival on June 7, 2019. The event flyer indicates the time of the demonstration. In fact, Mr. Duru has not provided any evidence to the

contrary. His submission of the video of the actual event performance confirms both the date and location of the contraventions. The applicant did not argue these facts. The first two elements of the contravention are therefore not in dispute.

[32] Under the *CARs*, Visual Flight Rules means that the aircraft is intended to operate in visual meteorological conditions i.e.: nice clear weather; no low clouds, precipitation, low visibility or otherwise adverse weather conditions. The video, provided by both the applicant and the respondent, leaves little doubt that the hoverboard event took place in VFR conditions.

[33] The Tribunal also concludes that based on the flyer's event information regarding the location being the Vieux-Port, and in reviewing the *Canada Flight Supplement*, the demonstration event took place in Class C airspace, designated as such by Nav Canada. This airspace is identified as starting from SFC (surface) to 3,000 feet. Since the hoverboard did get airborne, flew across the basin and returned to land, the Tribunal agrees with the Minister that the alleged contravention did take place in Class C airspace. As such, the Minister has proven Contravention 1 on a balance of probabilities.

[34] The applicant did not provide any evidence or testimony to counter that the event took place in Class C airspace.

## **B. Contravention 2 - Section 603.06 of the *CARs***

- a. On or about June 7, 2019, at approximately 10:45 EST
- b. at the Eurêka Festival, between De la Commune Street and Promenade du Vieux-Port
- c. operated an aircraft during a special aviation event
- d. when you did not meet the eligibility requirements specified in the *Special Flight Operations Standards*
- e. and you were not authorized under the conditions set forth in a special flight operations certificate-special aviation event

[35] Regarding the first two elements of this contravention, as mentioned previously, the Minister has proven on a balance of probabilities that the applicant was at the Eurêka Festival on June 7, 2019.

[36] The event flyer advertises the hoverboard event performed by the applicant. The video shows a crowd of spectators assembled on either side of the basin where the hoverboard was flown. Under subsection 101.01(1) of the *CARs*, a *special aviation event* means an air show, a low-level air race, an aerobatic competition, a fly-in or a balloon festival, and an *air show* means an aerial display or demonstration before an invited assembly of persons by one or more aircraft. Based on these definitions and the event flyer, the Tribunal agrees with the Minister that the hoverboard flight was conducted at a special aviation event.

[37] After careful consideration of relevant exhibits and testimony, the Tribunal finds that the Minister was successful in proving the final elements of the alleged contravention, that is, Mr. Duru was not authorized under the conditions set forth in a special flight operations certificate, issued for a special aviation event, to conduct the aerial demonstration on June 7, 2019.

Testimony from the Minister's witness indicates that no SFOC was ever requested by, or issued to, the applicant.

[38] In conclusion, the Tribunal has found that the Minister has proven Contravention 2 on a balance of probabilities.

### **C. Defence and the amount of the penalty**

[39] Section 8.5 of the *Aeronautics Act* states that no person shall be found to have contravened a designated provision if the person exercised all due diligence to prevent the contravention.

[40] The Tribunal considered the monetary penalty of \$2,250, as set by the Minister, appropriate. The Minister explained through testimony that the contravention in regard to section 601.08 of the *CARs* was a first infraction and that the penalty was in line with the monetary penalty guidelines set by Transport Canada. The contravention under section 603.06 was also a first offence but did have aggravating circumstances, as the applicant was aware of the required permission to conduct the event and chose to carry forth without it. The Tribunal did not learn of any substantive mitigating or aggravating factors that affected the recommended monetary penalty.

[41] The Minister's Exhibit M-9 dated October 29, 2018, approximately eight months prior to the event on June 7, 2019, is important in evaluating the monetary penalty assessed. The email correspondence between the applicant and Transport Canada details the required steps to take in order to meet the existing *Canadian Aviation Regulations* for the Omni Hoverboards Inc. demonstration event:

- a. definition of an aeroplane
- b. CAR 603 – Special Flight Operations
- c. CAR 202.13(2) – Requirement to register the aircraft
- d. CAR 401.03(1) – Requirement to Hold a Flight Crew Permit, Licence or Rating
- e. CAR 605.03(1)(a) – Flight Authority
- f. Information and website link for exemption status required

[42] The applicant did submit evidence and testified as to the safety of the hoverboard. Exhibit R-1 (Prop Test - time to stop) and Exhibit R-3 (calculating the distance travelled in case of an emergency shutdown), are important parts of the safety elements when applying for an SFOC.

[43] Once a defence of due diligence is raised, the onus shifts to the person relying on the defence to prove it on a balance of probabilities. Both exhibits unfortunately cannot be considered, as there were no time date stamps available, nor have I heard anything in regard to when they were actually produced.

[44] In issuing an SFOC, the safety of the spectators is paramount. It is clear that the public interest in aviation refers to safety and compliance with the statutes, regulations, standards and requirements related to aviation. Issuing an SFOC requires multiple safety analyses and evaluations done by both the applicant and the issuer.

[45] As for the actual event on June 7, 2019, the Tribunal believes that the applicant did not present a due diligence defence in respect of the contraventions.

[46] Part of the application process clearly requires that the complete safety envelope of the actual demonstration be assessed. The following is an example from the Application for a Special Flight Operations Certificate (SFOC) for the Operation of an Unmanned Air Vehicle (UAV) System in Canadian Airspace:

SECTION 11 – AMPLIFYING NOTES

92. The Certificate applicant must read the SI 623-001 and AC 600-004 for guidance on terms, and definitions, general operating rules, risk management, liability insurance requirements, radiotelephone operator certificate requirements and general information. The following amplifying notes contained in this application form have been included to help the Certificate applicant fill the SFOC application form. The SI 623-001 and AC 600-004 remain the main reference documents.

It is the Certificate applicant's responsibility to provide sufficient information and risk mitigation measures to permit the Inspector to adequately assess the safety of the proposed operation. Failure of the applicant to demonstrate the ability to conduct safe operations will result in significant delays or a denial of the issuance of an SFOC.

[...]

[47] In conclusion, although I find the testimony of Mr. Duru to be credible, I find that the Minister has proven all the essential elements of both contraventions on a balance of probabilities. I commend the applicant's actions after the event on June 7, 2019 in applying for the required permit, certificates and licenses to safely operate the hoverboard. However, based on the testimony and evidence produced during the review, and although the applicant was made aware of the steps to take to properly proceed with the hoverboard demonstration, the Tribunal heard no testimony or evidence that he completed such steps prior to the date of the contraventions.

### III. DETERMINATION

[48] The Minister of Transport has proven, on a balance of probabilities, that the applicant, Catalin Alexandru Duru, contravened subsection 601.08(1) and section 603.06 of the *Canadian Aviation Regulations*. As such, the monetary penalty of \$2,250 is upheld.

[49] The total amount of \$2,250 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.

February 3, 2022

(Original signed)

Franco Pietracupa  
Member



Appearances

For the Minister:	Martin Forget
For the Applicant:	Self-represented