



COPA

CANADIAN OWNERS AND PILOTS ASSOCIATION

COPA Guide for Enforcement



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Introduction

This guide was developed to assist COPA members who find themselves involved with a Transport Canada regulatory investigation or a violation.

Scope of this Guide

This guide is the new version of a long-standing COPA Guide. The original book was entitled *The COPA Guide to Understanding the Regulatory Enforcement Process*.

This new version has been updated and includes information on the Transportation Appeal Tribunal of Canada (TATC) as it has replaced the Civil Aviation Tribunal (CAT) among other changes. This book is not designed to replace competent legal advice where appropriate. It is designed to give some background information and de-mystify the enforcement process.

NOTE

While this guide does discuss the rules for aviation enforcement, it is not legislative. Ensure that you read and understand the current CARs and TC enforcement policies before taking further action!

The [Transport Canada Aviation Enforcement Policy Manual - \(TP 13794\)](#) and the [Canadian Aviation Regulations \(CARs\)](#) can both be found on the TC website.

Aviation Enforcement - Part I

This is the first article of a two-part series prepared by the Aviation Enforcement Branch of Transport Canada.

Aviation Enforcement Objective

Aviation safety is the focus of Transport Canada Civil Aviation and is largely achieved by the aviation community through voluntary compliance with the Canadian Aviation Regulations (CARs). When voluntary compliance is not forthcoming, enforcement action becomes necessary and this action is taken by the Aviation Enforcement Branch.

As a contracting State of the [International Civil Aviation Organization \(ICAO\)](#), Canada has an obligation to oversee the safe and efficient operation of all aviation activity for which it is responsible. Canada has agreed to the application of Article 12 of the Convention, Rules of the Air, which simply directs that each contracting State adopt measures to ensure that every aircraft flying over or maneuvering within its territory and every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight. As well, each contracting State should undertake to ensure the prosecution of all persons violating applicable regulations.

Aeronautics legislation in Canada is comprised of the [Aeronautics Act](#) and the [Canadian Aviation Regulations \(CARs\)](#). The legislation has been created to protect the public from unsafe practices and harmful situations resulting from aviation-related activities. The *Aeronautics Act* provides the basis for administering aviation safety in Canada. The Minister of Transport in turn has the responsibility for the development of regulations and standards, for licensing and certification, for promotion and security of services relating to aeronautics and for ensuring aviation safety. There is also a legal responsibility for the Minister to ensure compliance with aviation regulations. To accomplish this latter task the [Aviation Enforcement Branch](#) was established to supervise and administer the enforcement mandate established in the ICAO Convention. Enforcement, and the administering of subsequent penalties provided by a legal framework, has been delegated to enforcement inspectors. As a result of international agreement and domestic legislation, enforcement becomes an obligation, not an option.

Aviation Enforcement Philosophy

Transport Canada's aviation enforcement policy recognizes the fact that "voluntary compliance" with the regulations is the most progressive and effective approach to achieving aviation safety. It is assumed that most people are rational, responsible, law abiding citizens in their own right and self interest. However, those individuals less motivated by such factors as common sense, personal responsibility, pride and professionalism, and especially safety will become the focus for enforcement action.

Aviation Enforcement Policy

NOTE: The **Aviation Enforcement** site has undergone some changes. It has now been incorporated into the **Standards Branch** of the Civil Aviation website.

Fairness and firmness are the key words in defining the enforcement policy. Primarily public safety and, additionally, economic consequences are considered when determining what type of enforcement action should be taken.

To ensure fairness in the enforcement process and uniformity in the selection of the appropriate deterrent, specific courses of action have been established such as:

- Encouraging open communication between individuals being investigated and enforcement inspectors in an attempt to close an investigation as soon as possible, especially in cases where there are mitigating circumstances;
- Providing “oral counselling” for minor violations where there is no threat to aviation safety;
- Providing the opportunity for individuals to request an informal meeting with the Regional Manager, Aviation Enforcement, to discuss monetary penalties or suspensions that may have an adverse affect on their personal or economic circumstances;
- Ensuring enforcement personnel are accessible to the aviation community to explain and discuss the enforcement process and accept suggestions for improvement; and
- The promotion of voluntary compliance through seminars and presentations.
- Firmness is essential in the enforcement process when responding to repeated or premeditated actions, especially those displaying willful and flagrant disregard of the civil aviation rules and regulations.

Aviation Enforcement Program

The Aviation Enforcement Program includes four major elements aimed at promoting compliance with the regulations: prevention, detection, investigation and deterrent action.

Prevention

Preventive action is intended to reduce violations and promote voluntary compliance. It is achieved through education, licensing and certification, publicity, consultation with industry, routine inspections and field operations that provide a visible regulatory presence.

Inspections

The Minister of Transport authorizes persons employed in specific positions to exercise certain powers, duties or functions under subsection [4.3\(1\) of the *Aeronautics Act*](#). The purpose of inspections is to determine whether compliance with regulations and standards is being maintained. Inspections involve the examination of Canadian aviation documents, aircraft, cargo, premises, aeronautical products such as appliances, parts and components and facilities relating to aeronautics. Inspections include such activities as:

- Aviation Enforcement Inspectors on field operations;
- Commercial and Business Aviation Inspectors performing company inspections, audits and flight tests;
- General Aviation Inspectors conducting examinations and flight tests of pilot licence applicants and instructors, and performing inspections and audits of flying schools and clubs;
- Airworthiness Inspectors conducting audits and inspecting aircraft;
- All inspectors using the air transportation system; and
- Airport management personnel supervising air side activity.
- Depending on their particular duties, Transport Canada inspectors may also be delegated all or some of the following powers:
 - The authority to enter and conduct an inspection of aircraft, aerodromes, facilities or premises in accordance with [paragraph 8.7\(1\)\(a\) of the *Aeronautics Act*](#);
 - The authority from [Section 103.02\(2\) of the CARs](#) to demand the production of a Canadian aviation document, technical record or other document;
 - The authority to charge an individual with willfully obstructing or impeding an inspector during an inspection in accordance with [paragraph 7.3\(1\)\(d\) of the *Aeronautics Act*](#). This is considered a serious offence and may be proceeded with by prosecution through the courts;
 - The power to seize anything found in any place entered for the purposes of inspection if it is believed the item seized will afford evidence with respect to a violation, in accordance with [Paragraph 8.7\(1\)\(c\) of the *Aeronautics Act*](#);
 - [Paragraph 8.7\(1\)\(d\) of the *Aeronautics Act*](#) grants authority to detain any aircraft if there are reasonable grounds to believe the aircraft is unsafe or is likely to be operated in an unsafe manner; and

- The authority to suspend a Canadian Aviation Document under [Section 7 of the Aeronautics Act](#) on the grounds that an immediate threat to aviation safety exists or is likely to occur.

Field Operations

This involves routine visits to aerodromes, float bases, commercial operators, flying clubs and schools and various aerodrome facilities. As well, inspectors attend and monitor special aviation events and activities such as air shows and fly-ins.

Analysis of information gained from inspections and field operations is of major importance to Transport Canada Civil Aviation in identifying safety deficiencies and aids in the development of safety promotion and education programs for industry.

Detection

The detection of a violation or possible violation of the air regulations may result from activities such as routine inspections, field operations conducted by civil aviation inspectors, or from police reports, Air Traffic Services infraction reports, aircraft accident investigations and public complaints. As well, the Aviation Enforcement Branch conducts regulatory investigations where there are grounds to believe that violations are being committed within the aviation industry. Additional violations may be detected during such an investigation.

Investigation

An enforcement investigation is a systematic search for, and documentation of, facts relevant to an occurrence or suspected violation. Deterrent action may result from an investigation.

Deterrent Action

The most important decision in the enforcement process is determining the penalty to be imposed when the evidence indicates an individual is in violation of an aviation rule or regulation.



Aviation Enforcement - Part II

This is the second article of a two-part series on the Aviation Enforcement Branch of Transport Canada. The first part described the enforcement objective, philosophy, policy and program. This article outlines the types of offences and describes the enforcement process including the conduct of investigations, the assessment of penalties and the recourse available to a Canadian aviation document holder.

Types of Regulations

Regulations may be enabling, administrative or offence creating. Only the offence creating regulations can be the subject of enforcement actions.

Enabling regulations are those which confer power on persons to make some other type of standard or policy. For example, in the *Aeronautics Act* and CARs some enabling regulations give powers to create orders and publications.

Administrative regulations confer a power or impose a duty on the Minister of Transport. For example, they allow the Minister of Transport or his representatives to conduct inspections or direct him to issue Canadian Aviation documents.

Offence creating regulations can be one of two types. First, those that mandate a certain form of conduct and second, those that prohibit certain conduct. Non-compliance with these regulations is a violation that can result in administrative or judicial enforcement action.

Administrative action includes oral counselling, the suspension of a Canadian aviation document or the assessment of a monetary penalty. It is the enforcement action normally used by the Minister of Transport in accordance with the *Aeronautics Act*.

Judicial action, used infrequently, involves the prosecution of an alleged offender in the criminal courts in accordance with the provisions of the *Criminal Code*. This action is normally used where aviation safety has been seriously jeopardized or previous administrative action or suspension has been ineffective.

The type of offence determines whether administrative or judicial action will be taken.

Offences

There are three types of offences to be considered according to the *Aeronautics Act*. The largest category by number is the “designated provision” offences. Of the 869 offence creating regulations in the CARs, 851 have been designated as regulations that, if violated, must be dealt with administratively. The penalty is determined and assessed by the Minister of Transport.

There are seven “hybrid offences” listed under [Section 7.3\(1\) of the Aeronautics Act](#). These offences are considered to be more serious in nature. In the event of a contravention, the Regional Manager, Aviation Enforcement (RMAE), will decide whether to proceed administratively by way of suspension or judicially through the courts.

There are 18 “summary conviction offences” in the CARs and again these may be addressed judicially or administratively by suspension. Under [subsection 7.3\(3\) of the Act](#) all contraventions of the *Aeronautics Act* and the CARs, except the Designated Provisions, may be prosecuted by judicial action before a provincial court judge.

Several sections of the *Criminal Code* address offences related to the operation of aircraft. These offences are often dealt with by the appropriate police agency and are prosecuted through the courts. For example, flying while impaired or without a valid licence or permit could lead to prosecution under the *Criminal Code*. Conviction means a criminal record and possible difficulties in such activities as traversing international borders or attaining employment.

Investigations

All Transport Canada Civil Aviation inspectors have the authority to initiate investigations; however, Aviation Enforcement Policy recommends that comprehensive investigations be conducted by Aviation Enforcement Inspectors. Depending on the circumstances of the investigation and the requirement for a particular expertise, inspectors from other specialty branches within Transport often assist the Enforcement Branch with an investigation. Transport Canada and the [RCMP](#) may also conduct joint investigations into aviation-related activities.

As previously mentioned, the detection of a possible violation may result from a citizen’s complaint, an infraction report forwarded by Air Traffic Services, a routine inspection being conducted by Transport

Canada personnel or observations by Transport inspectors engaged in field operations.

Should a Transport Canada inspector observe an individual committing a violation of the regulations, the inspector has the authority to take immediate action. If the violation is minor in nature and inadvertent, or is a safety related violation where there is no direct flight safety hazard, the inspector may simply counsel the individual orally. This action provides the licence holder with immediate feedback on the safety aspect of the incident and the necessity for compliance with the regulations.

Another consideration in choosing to provide oral counselling may be the inappropriateness of imposing a monetary penalty or suspension. Although a record of the reason for an oral counselling is usually made on a Detection Notice form, the fact that an individual has received oral counselling will not be reflected on the personal file or enforcement record.

When a Transport inspector observes or is apprised of a possible violation for which oral counselling is inappropriate, the inspector completes an initial violation report using a Detection Notice form and forwards it to the Regional Aviation Enforcement Office. The RMAE reviews all reports and establishes the priority for a comprehensive investigation of each depending on the seriousness of the infraction and its impact on aviation safety. The information contained in the Detection Notice form provides a valuable source of information to the Enforcement Branch on safety deficiencies and helps define the Aviation Enforcement Program.

Comprehensive Investigation

When a comprehensive investigation is begun by an enforcement inspector an attempt will be made to contact the alleged offender in person or by telephone. Also, a Letter of Investigation outlining the facts of the alleged violation as they have been related to the enforcement inspector will be sent by mail. The alleged offender will be allowed 30 days from the date of the letter to respond to the allegations. During this time the investigation will continue.

An alleged offender is not obliged to assist in the investigation, however, it is in the best interest of all parties for the alleged offender and the enforcement inspector to communicate in order to expedite the process and resolve the allegations as rapidly as possible. The reasons for this approach are numerous. For instance, there may have been mitigating circumstances that made compliance with the regulations beyond the control of the alleged offender. Additional information may be supplied by the alleged offender that positively demonstrates that a contravention did not occur.

Open communication early in the investigation may uncover facts that could lead to the termination of the investigation with no further action. Should an investigation continue, and it is established that the evidence available supports the allegation of a violation the investigator will forward the case to the RMAE and include a recommendation for the type of deterrent action.

Enforcement Actions

If the RMAE concurs with the findings of the investigating inspector, the RMAE will decide whether to proceed administratively or judicially. When proceeding administratively, the RMAE determines the penalty to be imposed by referring to a standard table of recommended penalties. The table is based on maximum monetary penalties allowed by regulation and specifies a monetary penalty amount and/or document suspension period for each of the offence creating regulations. The penalties escalate for repeat offences.

Following assessment of an administrative monetary penalty, the RMAE will complete a Notice of Assessment of Monetary Penalty form, clearly describing the offence and providing sufficient details of the violation so the alleged offender can identify the incident or incidents constituting the violation. The Notice form will be served personally or by registered mail, along with an information sheet describing the informal meeting procedure which offers the alleged offender an opportunity to discuss the penalty.

The Notice will include information on how to file an appeal with the Transportation Appeal Tribunal of Canada (TATC). Appeals are not automatic – alleged offenders have 30 days to file an appeal or else the TATC cannot hear the case and the penalty must be paid then. If an appeal is filed the TATC will then notify the offender when and where to appear before a member of the tribunal to respond to the allegations and the assessed penalty.

The suspension of a Canadian aviation document for contravention of a regulation is the most severe administrative action the Minister can impose. Suspension action is taken where a monetary penalty would be an inadequate deterrent or continued use of the document would create a hazard to aviation safety. Where a Canadian aviation document has been suspended, the person to whom it was issued shall return it to the Minister and may not exercise the privileges attached to that document until it is restored by the Minister. Normally suspensions are in effect for a specified time period.

When the RMAE determines that a suspension is appropriate and decides on the duration, a Notice of Suspension form is completed in accordance with [subsections 6.9\(1\) and \(2\) of the *Aeronautics Act*](#). The Notice contains a clear description of the offence and sufficient details of the violation to enable the alleged offender to identify the incident constituting the violation. The notice also states that if a review of the decision is to be sought, a request must be made to the TATC within 30 days after the notice is served on the alleged offender. The notice form is served personally or by registered mail along with an information sheet describing the informal meeting procedure which offers the alleged offender an opportunity to discuss the penalty.

An alleged offender may deliver the suspended aviation document to the RMAE or the RMAE's appointed delegate on or before the effective date of the suspension.

An alleged offender who requests a review of the case by the TATC may also apply for a delay in the effective date of the suspension pending the decision of the TATC. Unless there is a threat to aviation

safety, the RMAE will not oppose the application.

Where the alleged offender does not ask for a review by the TATC and fails to deliver the suspended document, charges will be laid against the alleged offender under [Section 103.03 of the CARs](#).

Recourses Available to the Document Holder

The informal meeting offers the alleged offender who has received a Notice of Monetary Penalty or a Notice of Suspension the opportunity to discuss the amount of the monetary penalty or suspension with the RMAE. The alleged offender normally has 30 days from the date the notice is served or sent to accept the offer and meet with the RMAE. However, if a TATC hearing date is set the informal meeting can take place anytime before the tribunal hearing. During an informal meeting, RMAEs may enter into penalty negotiations with a view to reaching a settlement in the case, thereby closing the file. Only the type and amount of the penalty may be discussed and not the findings of the investigation. Any modification to the penalty shall be made conditional on immediate compliance with the agreed penalty and on the signing of a waiver of the right to a review by the TATC. An agreement shall not be conclusive until the licence is surrendered or the fine is paid.

The [Transportation Appeal Tribunal of Canada](#) is an independent, quasi-judicial body created under Part IV of the Aeronautics Act to review administrative actions taken by the Minister of Transport concerning licensing and enforcement decisions, (for more details see [AIM. Canada, LRA 6.0](#)). The TATC is not an agency of Transport Canada. It is composed of individuals with experience in many different aspects of the aviation industry. Hearings will be conducted informally and expeditiously.

A review by the Transportation Appeal Tribunal of Canada is a hearing conducted by a single TATC member that the alleged offender and representatives of the Minister of Transport are requested to attend. Where a monetary penalty is assessed against an alleged offender or where a document is affected he or she must request an appeal in writing within 30 days. The TATC will schedule a hearing and send the alleged offender a request to appear. The tribunal may decide the matter by confirming the penalty or by substituting its own decision and/or penalty.

An appeal of a Transportation Appeal Tribunal of Canada review decision may be initiated by any person affected by the decision of the single TATC member. A panel composed of three members of the tribunal examines the merits of the decision. The panel is limited to considering the record of the evidence introduced before the single member, other evidence not previously available that it considers necessary for the purposes of the appeal and oral argument by the parties. At the end of the appeal hearing the tribunal may confirm the original decision or substitute a new decision.

The right of appeal in a judicial proceeding is always available to an alleged offender or to the Minister of Transport.

Removal of the Record of a Penalty

A person may apply to have a notation of monetary penalty or suspension removed from their personal files if at least two years have expired since the date the monetary penalty was paid in full or since the date the document suspension expired and there have been no additional violations. This is accomplished by a written request addressed to the Regional Manager of Enforcement requesting that the record be expunged. As long as:

- At least two years have transpired since the date the suspension expired or the penalty amount was paid
- No additional suspension or penalty has been recorded against that person after that date
- It would not be counter to the public interest
- Then all record of the offence and the penalty will be removed from the records.

The Enforcement Branch, through these two articles, has provided some insight into the enforcement process. Various [Transport Canada publications](#) are available to amplify many of the topics touched on in these articles.

Inspector Dave Balfour
Inspector Jim Humphrey

Tangled Up By Transport Canada By Charles Gregoire

The February, 1998, issue of Canadian Flight featured a Civil Aviation Tribunal report that reversed Transport Canada's charge of low flying against Charles Gregoire. This is his report on his experience with the regulatory process that he hopes will be helpful to other COPA members who may find themselves in similar circumstances.

Note that the "CAT" has had a name change to "TATC".

It was a beautiful Sunday morning to fly to a nearby fly-in breakfast about 30 minutes away. Little did we know that the events of that day would culminate in a Civil Aviation Tribunal hearing 14 months later. The flight to/from the breakfast was uneventful relative to the many other fly-in breakfasts we had attended that summer. I was a new pilot having received my licence that spring. My wife was working on her recreational permit. We were new airplane owners, having owned our airplane for approximately two months.

Being a new pilot, I was rather diligent in obtaining a weather briefing that morning and carefully going

through all the cross-country planning procedures required as per my training. All this despite the obvious clear weather and short flight ahead of approximately 43 nm. It would turn out the information captured in the planning forms would serve as useful information in my defense. I also had submitted flight plans for the two flights. This would not be useful as evidence since the flight plan tapes are erased after a three-month period.

The first sign of trouble came approximately two months later in a letter asking me to submit our journey log for inspection. At this point I felt somewhat apprehensive, wondering what might be up. There was some indication that they needed to know about all flights conducted after June 1. I brought the log to my AME to make sure all the latest maintenance that had been performed on the aircraft had been properly entered after which the log was submitted. I kept thinking about what it might be.

The answer came one month later when I received a note indicating that an investigation regarding a possible violation of the Air Regulations regarding low flying over a built-up area was being investigated and that it was alleged to occur on or about the day of the fly-in breakfast. I was invited but not obliged to respond with a statement or evidence to submit.

The first thing I had to do was to figure out what had happened on the day of the allegation approximately three months after the fact. Luckily I was in the habit of recording each flight in the journey log, including precise takeoff and landing times. It was easily determined that there had been three flights that day. The first two flights were to/from the breakfast and there was a solo training flight by my wife that evening.

With that seed of recollection we started to piece all the events that had occurred that day. Fortunately there had been a visitor airplane at our local airport that everyone had recalled because it was amphibious and they needed help to make some minor repairs to the landing gear. It turned out this was an important point of recollection for one of my witnesses at the tribunal, (i.e. that recollection coupled with the visitor's journey log indicating the date and time of their visit).

Both my wife and I had concluded the low flying reported was likely to have occurred during her solo training flight since we were able to determine she had indeed been instructed to practice some precautionary landing procedures. There was a chance that an observer may have perceived the airplane to be flying low during this procedure. After some consultation with a few experienced flying acquaintances I drafted a typed statement that I submitted to the investigator. I later contacted them by phone to confirm they had received the statement. In retrospect it would have helped if the approximate time of day of the allegation had been clarified in the Transport Canada letter since we would only find out six months later that I, as pilot-in-command of our aircraft, was being charged. One month after this I was able to determine that the infraction was presumably alleged to occur during the return flight from the breakfast.

Prior to receiving the formal charge, approximately five months after submitting our statement, I had been contacted by the investigator to discuss the case. After all the discussions I had with acquaintances regarding investigator tactics which, in retrospect, were exaggerated, I was hesitant to return the voice mail. Looking back I think I should have freely discussed the case with the investigator.

There is a chance that having done this, I could have perhaps averted the need to go to a tribunal although my perception at the time was that this investigator was out for a score. I could have taken the opportunity to ascertain the details of the case being put together against me with a few simple questions like “when, what time of day, what flight, number of witnesses...”. I could have clarified my position at that point and the investigator might have reconsidered. Of course I didn’t and a month later the charge came in the mail.

As I am sure some reading this article can relate, it is not a pleasant situation to be accused of something one did not do. I could have averted the stress of having to go through the Civil Aviation Tribunal hearing by simply paying the \$250 fine. Of course this would have been the least expensive way to proceed but a sense of the “unfairness of it all” as well as the thought of a “needless black mark on my flying record” prompted me to go ahead with defending myself.

As part of the formal charge, an offer is made to discuss the case in light of circumstances surrounding the incident for the purposes of negotiating a relaxed penalty. I had no use for this opportunity since I knew I was innocent and I would fight the charge.

So what to do now?! The answer was to simply wait. Wait for the time limit on the fine to run out and then wait for the follow-up call to schedule a CAT hearing — a pleasant thing to look forward to as you try to enjoy the beautiful flying weather over the summer. I was informed I would receive an information package regarding the CAT process and rules. I would also receive a disclosure of the evidence that Transport Canada had compiled against me two weeks prior to the CAT hearing. The final arrangements for the hearing were agreed upon in August to occur in September. The process of negotiating the date seemed to be a rather relaxed and flexible affair with due consideration to one’s availability (in terms of vacation plans, etc.).

Editor’s Note: This procedure has now changed and you must request an appeal to the TATC. Appeals are no longer automatic.

The first time I decided to contact COPA for help and advice was after I had received the call six months after I had submitted my statement. I was put in contact with Glenn Priestley, an ex-Transport Canada inspector, who was intimately knowledgeable regarding the whole enforcement process. He turned out to be an instrumental mentor in guiding me through the rest of this enforcement ordeal.

After receiving Transport Canada’s disclosure package the case against me became clear. Despite the fact that I knew I was innocent of the charge, seeing the evidence they had was rather intimidating. How does one prove one did not do a certain thing that occurred while airborne more than a year later? I was rather discouraged about the whole thing. Part of this feeling came from my lack of experience with this kind of confrontation. I did not receive many words of encouragement from some of my acquaintances. Many were rather negative about my chances of succeeding in this situation.

The strongest piece of evidence I knew I possessed in my favor was my wife’s testimony that she was with me on the flight. I was advised by many that she would lack credibility because she was my wife. This was the single most discouraging comment I received. The thing to remember here is not to put

too much emphasis on negative opinions, especially when received from well-meaning acquaintances who are not well versed in legal matters. One must filter the positive, constructive ideas from the negative discouraging ones.

My first refuge from all this dread was from COPA. Glenn, who was very familiar with all the details leading up to this situation by now, was eager to help and advise me. He offered to look at the disclosure package, which I faxed to him. A few days later after he had had a chance to study the information he called me back and encouraged me that my chance of success was good and assured me there was nothing wrong with the credibility of my wife's testimony.

I also received a boost in morale from two other sources. I called my lawyer who gave me about 15 minutes of his time. He also reassured me there should be no issue with my wife's credibility and that I should not be disadvantaged because I was not in the habit of flying with strangers! Perhaps my most comforting boost in morale came from a spiritual flying friend who assured me to relax and think positively about the whole situation.

Glenn advised me to put together a dossier of documents that included:

- all correspondence from Transport Canada leading up to this CAT hearing;
- a description of the sequence of events, in my own words, leading up to the hearing; and
- other miscellaneous documents that would back up my story.

I proceeded to call on my friends who I had contact with on the alleged day to obtain signed statements from them to back up my story concerning my whereabouts at various times. At first it was difficult for these people to remember a date, since it was over a year ago. I was fortunate, however, in that most of them remembered the visiting airplane.

After having received most of the statements I called the CAT office to find out how these statements should be submitted. To my horror I was told these statements were virtually useless! My lawyer also confirmed this. What I needed were real witnesses willing to testify under oath.

On such a minor charge it would be difficult to ask someone to take time out of their day to come to this CAT hearing. Of course I could always subpoena them but this would mean I would need to submit advance evidence that they were duly compensated at my expense to come to the proceedings. I was not going to ask anyone to come in this manner.

I selected one witness who I felt was the most important, besides my wife, and asked her if she could please attend. Luckily the individual graciously accepted because, being a pilot, she understood and wanted to help out. She would need to be excused from work in order to attend and asked me to send the subpoena anyway so she could show the supervisor she had to attend.

My first draft dossier was completed and I faxed it to Glenn for review. I received a lot of helpful

feedback and tips. I was advised to prepare a list of questions for Transport Canada's witness and also the investigator. I was also advised to put together a script in point form of all my key statements as well as a list of questions for my two witnesses.

This was probably the most crucial preparation since I ended up just reading this at the hearing. It would have been very difficult for me, personally, to pull off my defense without this preparation since, with the stress of the situation, I probably would have left out (or forgotten) many of the key thoughts and questions. After many hours of preparation my final dossier, for better or worse, was completed the evening before the trial.

The big day was upon us. My wife and I arrived early and ended up meeting the Transport Canada participants, which included the investigator. The chatter was friendly and informal. Despite this I had been advised prior to this day that, from Transport Canada's point of view, there would be no mistake that they were in it to win. This was definitely an adversarial situation.

There is no jury but a person referred to as the "member" whose role is to act as a judge and at the same time advise the defendant on their rights during the proceedings — sort of a judge and defense advisor all in one. This is an important part of the member's role since the process is meant to be informal and to not require a lawyer. Be that as it may, this is not a casual process and I am convinced it will devour the innocent pilot who is not mindful of being well prepared.

The proceedings were audio taped and open to the public. The room was similar in size to a medium sized boardroom with a set of small desks arranged in a square. Transport Canada sat on one side and I sat on the opposite with the member in between. Opposite to the member was a row of chairs for the public.

The defendant, Transport Canada and all witnesses were first sworn in. The defendant's witnesses were then escorted to a waiting room. Transport Canada presented their case and witness that I then got to cross-examine. Having a list of prepared questions was crucial to me at this point. I took my time and asked for clarifications on any point that was not clear.

The member and I received a copy of all documents and exhibits submitted as evidence. Following Transport Canada's presentation I was allowed to present my evidence. I started with my statement which included my version of all the events leading up to the trial. As one might imagine, this was a rather time consuming process. Following my statement Transport Canada was allowed to cross-examine me. I tried to submit my whole dossier to the member and Transport Canada, which had all of 30 numbered pages. This was not accepted and I had to submit documents as I gave my statement one at a time. Each document was subject to scrutiny by Transport Canada and the member in terms of its relevance to the case. During this process the member addressed Transport Canada's arguments as both judge and on my behalf.

The member led and advised me at each juncture of the process (what I could or could not do). It was important to stay relaxed and take my time. Another important tip was to try to occasionally reiterate the basic theme of my defense (I was not there, I didn't do it...).

By the time I finished my statement it was almost lunchtime and the member moved for a lunch break. Thinking about my two witnesses, who basically wasted much of their morning waiting, I asked if we could proceed with my witnesses in the interest that they be able to return to their work. The member, who had been most gracious, fair and encouragingly helpful, agreed.

Having a list of prepared questions for my own witnesses was crucial. I remembered that what might seem obvious to me wasn't for the member so I asked questions that highlighted the basic facts that I wanted to reinforce. Transport Canada cross-examined each witness and of course tried to trip them up. After the questioning was completed we broke for lunch. Afterwards we made our final closing arguments.

As you can imagine, lunchtime was a rather crucial time to sit and think about those arguments. To my great fortune, Glenn had been able to attend the trial and I had lunch with him, my wife and a flying buddy from EAA who had come along for support. Glenn provided me with some good points for me to hit on. This was a tremendous help to me. After lunch I wrote out a point form summary. I thought it was important to jot down my arguments beforehand so I would be well prepared for a stressful situation.

Transport Canada presented their points followed by myself. I reiterated my innocence and basic theme. I touched on some points that suggested the weakness in Transport Canada's case and their single witness' statements.

Transport Canada followed this with a statement to the member that they had exercised due diligence in the investigation before issuing the charge against me. Transport Canada also reviewed the penalty options with the member and suggested an option based on the circumstances of a first offence. The member assured me that accepting this last point in no way should be interpreted as a sentence of guilt; it was just a formality of the process.

With the process now completed the member advised us that the judgment would most probably be available in about two to three weeks and closed the proceedings.

Glenn and I had a short chat afterwards. We noted that the tribunal member had done a very good job representing my interest and that, from a process point of view, we were both pleased with how it had gone. We predicted the review would weigh in my favor. I was so tremendously relieved! Not so much because it seemed to weigh in my favor but that the CAT ordeal was finally over and that I had given it my best shot. Glenn and I agreed I should try and write an article about this ordeal for the benefit of other pilots who may find themselves in a similar circumstance.

Approximately one month later I received registered mail that indicated I did not contravene the air regulation and that the fine had been cancelled. I was found innocent of the charge!

In hindsight, what do I have to say about this ordeal? First, I was very fortunate to have the support of COPA. COPA demonstrated their interest in helping the "little guy", the private pilot, who has the privilege of enjoying aviation as a recreational activity in Canada.

An awful lot of effort and money went into this investigation which was, in all fairness, flawed. My attitude regarding Transport Canada remains one of respect with a touch of healthy skepticism towards their policies and how they affect the little guy.

I acknowledge the need for Transport Canada to be there to protect the public against unsafe operations. Intentionally flying low over a built-up area is an unsafe practice that requires vigilant enforcement. Care needs to be exercised, however, in these investigations to make sure ample evidence is there to support the charges. I would suggest someone who reports such an incident exercise diligence in identifying the registration and also the precise time of the incident.

The correct time frame is very important in the interest of protecting the rights of pilots who may share a common aircraft. It is also easy to misread a registration (i.e. confusing certain letters such as E and F, U and V).

For this reason, due diligence should be exercised in trying to obtain more than one witness (as circumstances allow) who can corroborate both the time and registration.

In my case I believe there was not enough effort put into interviewing the witness to ensure the certainty regarding the time of the occurrence.

Students training in their own aircraft should make sure low altitude maneuvers, such as forced and precautionary landing practice, take place in well known, designated training areas where there can be no question the location is not a built-up area.

In my case, having a log that had each flight and the exact time of day it took place recorded was beneficial and it pays to fly with someone. They could be your only credible witness. You may want to take the time to explain to them where the altimeter is located... even better if the other person is also a pilot.

Let us hope investigations by Transport Canada are conducted with due diligence and not at the expense of needless harassment of conscientious pilots, that they do not alienate the interest in this adventurous, wholesome and challenging past-time called flying!

The Transportation Appeal Tribunal of Canada - Making the Process Work

The [Transportation Appeal Tribunal of Canada](#) is a quasi-judicial body that was established in 1986 as the Civil Aviation Tribunal. Its role is to review the administrative decisions of Transport Canada that affect licenses or impose penalties under the *Aeronautics Act*. The review process applies to four types of government administrative actions. Three of these involve the powers of suspension or cancellation of aviation documents. The fourth is the power to assess monetary penalties for the contravention of certain regulatory provisions.

The TATC operates independently of any other government department. The purpose of the TATC is to provide those affected by Transport Canada administrative enforcement decisions with an opportunity

for a fair hearing before an independent body.

The TATC consists of a full-time chairperson, vice-chairperson and support staff based in Ottawa, Ontario. Part-time review members of the tribunal are appointed from across Canada to hear cases as the need arises in their area. These members are chosen on the basis of their knowledge and experience in aeronautics, including aviation medicine and aviation law.

Two Levels of Hearings

The first level of hearing is conducted by one tribunal member. It is a review of the Minister of Transport's decision to suspend, cancel or, based on medical grounds, refuse to renew a Canadian aviation document or to impose a monetary penalty.

The second level of hearing, usually heard by a designated chairperson and two other tribunal members, is an appeal of the determination rendered by the tribunal member at the first level.

How Does the Process Work?

Upon being notified of a suspension or cancellation, the aviation document holder has 30 days to file a written Request for Review with the Transportation Appeal Tribunal of Canada. Filing this application for review hearing does not automatically implement a stay of a suspension or cancellation. A request for stay must be made to the tribunal and this may be granted provided there is no threat to aviation safety.

Once the TATC has granted a review, a date, time and location will be established that is mutually convenient to the applicant and Transport Canada.

Representation at Hearings

Parties may appear personally, be represented by an agent or appear with an agent. An agent may be a lawyer, an association representative, a relative, a friend, etc. Where representation is by an agent, a Notice of Appointment of Agent should be filed with the tribunal.

The Transportation Appeal Tribunal of Canada provides a review process for the document holder to address a perceived error in decision or to introduce evidence to a neutral TATC member. It can be an intimidating process and legal representation should be considered although the TATC member will understand of an applicant's nervousness and lack of familiarity of quasi-judicial hearings.

The key to benefiting the most from a review is preparedness. Applicants should prepare a brief that is concise enough that the TATC member will easily understand the basis for the applicant's contention that the sanction imposed by Transport Canada was unjust.

Part of this preparation includes receiving from Transport Canada a disclosure package that includes the crown's position on the infraction, sanction and witnesses it intends to present to the tribunal. This disclosure must be made prior to the TATC hearing to allow sufficient time for case preparation by the applicant.

Review Procedure

The TATC member will introduce and record all the participants. The proceedings will start with an overview of the process by the TATC member. This will be followed by the Minister's representative presenting its case. The burden of proving the case rests on the Minister in all cases except for refusal to renew an aviation document on medical grounds, in which case the burden is on the document holder to establish that the Minister's decision in the matter is unjustified.

The document holder has the right to cross-examine the Minister's witness. This is where case preparation is important. The government disclosure package lists the Minister's evidence to support a sanction due to an infraction to the Aeronautics Act. The review defendant should have a clearly defined activities calendar and a list of questions to establish doubt in the Minister's decision is required.

In the Charles Gregoire Case, discussed earlier, it became apparent that Transport Canada had charged the wrong pilot. There was only one witness, a homeowner who reported a low flying aircraft. A series of questions were prepared by Gregoire that cast doubt on the accuracy of the time of the alleged infraction. These questions revealed inadequate investigation by Transport Canada.

After the Minister's case is concluded, the document holder may present his or her case by calling witnesses and filing documents by way of defense. Gregoire, besides being a very presentable applicant, enhanced his argument of innocence by providing a very detailed timeline with eyewitnesses that proved he could not have been where Transport Canada said he was at the time the alleged infraction was committed.

It helped that Gregoire was meticulous at record keeping. As the owner of his own aircraft, he made a habit of completing the journey logbook accurately and promptly. He also filled out navigation logs, filed flight plans and kept these papers on file. This proved invaluable in establishing time, speed and route taken.

Gregoire called several witnesses. One was to establish his credibility as a safe and conscientious pilot. Another witness established Gregoire at a certain place at a certain time when the alleged infraction was taking place. The most compelling witness was the passenger on the flight who was a student pilot. Again, preparing questions to ask the witnesses is important to establish clear points of view and to keep the presentation flowing.

The TATC members are professionals trained in the administration of a fair hearing. In the Gregoire case, the TATC member thoroughly explained the procedure at the start. Defendants should take two extra copies of their evidence portfolio to the review, one for the tribunal member and the other for

the Minister's representative. These should be numbered and indexed.

The TATC hearing is a stressful process for all concerned. During your presentations, try to make your point as quickly and effectively as possible. It helps to practice your presentation on a neutral party in advance and analyze how effectively the information was presented. The Minister's representative has the right to cross-examine the document holder's witnesses.

In conclusion, both parties will have an opportunity to present arguments to the tribunal member by way of a summation of the facts and the law as applicable. This summation should be type written and read carefully and concisely outlining why this charge is unjust, listing the reasons why the applicant is not guilty and establishing the flaws in the Transport Canada investigation.

Review Determination

The tribunal member shall render a determination in writing in the weeks following the proceeding. The tribunal members routinely provide written reasons together with the determination. In making its determination, the tribunal member may confirm the Minister's decision or substitute its own. In cases where the original decision was based on medical grounds, incompetence, lack of qualifications or involved a suspension or cancellation in the public interest, the tribunal member is limited to confirming the decision or, if it is found the decision is unjustified, to referring the matter back to the Minister for reconsideration. If the matter is referred back to the Minister for reconsideration, the Minister's decision is final and no further appeal to the tribunal is available.

Appeal Hearing

Any person affected by the decision of a tribunal member may appeal that decision to the TATC. When the appeal is granted, a panel of three members of the tribunal will hear it. The appeal panel is limited to considering the record of evidence introduced during the initial review, other evidence not previously available that it deems necessary for the appeal and oral arguments by the parties involved. A written request for an appeal, stating the grounds, must be applied for within 30 days of receiving the Review Hearing determination.

Summary

The most effective way to avoid Transport Canada enforcement action is to obey the law. The most common infractions are:

- Low flying;
- Flying over the allowable gross weight;
- Flying with incorrect, invalid or out-of-date licences or permits; and
- Flying an aircraft with airworthiness discrepancies.

It is COPA's experience that most of the staff at Transport Canada's Enforcement Branch are knowledgeable and reasonable people.

The Gregoire Case is an example of miscommunication between the parties. If it had been handled properly it should not have gone to the tribunal, but the case shows the TATC works when it is needed.

There are actions that pilots can do to help themselves. If the phone rings and it is an Enforcement Inspector asking uncomfortable questions, immediately establish a communications file and record all communications in regards to date, time and place and what was discussed and who was involved. This communication record is important in these days of voice mail. In a recent case, a message was left on a voice mail that the inspector did not get which cast doubt on the credibility of the document holder. This communication record also becomes part of the evidence portfolio.

If at all possible, try and meet face to face with the investigator. The severity of the allegation will determine whether you take legal representation to these meetings.

If a Transport Canada investigator requests for any documentation to be submitted, ask for the request in writing. Transport Canada should issue a receipt for the documents.

If an incident happens while you are flying that you believe may result in an allegation letter, request any finite evidence, such as Transport Canada tapes, be secured.

This happened recently when a COPA member took off from the wrong runway. The mistake was identified, admitted to and the tower personnel acknowledged there was no problem. This tape was helpful in establishing the depth of seriousness of the infraction.

An allegation letter was received by the COPA member who readily admitted his mistake, mentioned the tape and a reasonable enforcement inspector closed off the case with a letter of warning.

If You Are in the Wrong

Most pilots try to fly by the rules but sometimes mistakes are made. Most Transport Canada inspectors are more interested in maintaining a safe transportation system than in "busting" pilots.

If you know that you have actually committed the infraction that is alleged it may be best to take the penalty rather than appeal to the TATC. The tribunal has the power to increase fines and suspension periods and has done so in the past when the pilot has obviously broken the rules intentionally and repeatedly. Sometimes just paying the fine or taking the suspension is the best option if you know that you have committed the offence alleged. If you are innocent then by all means appeal!

One thing is certain, once you have received a call from TC Enforcement, get involved because it is your freedom to fly that is being challenged!