

Instructor vs. Student: A Brief Survey of the Legal Liabilities of Flight Training

For the undoubtably large number of bumps, grinds, cuts and hurt feelings incurred in the flight training process, there has been a surprisingly small number of reported Court decisions in the realm of general aviation flight training in Canada. This lack of jurisprudence is likely a result of relatively high standards in the industry in Canada resulting in few calamitous accidents.

In Canada, flight training is overseen by Transport Canada, the governmental authority charged with enforcing the Canadian Aviation Regulations (CARs) made under the Aeronautics Act. The CARs set a minimum standard for flight training in Canada, and are quite detailed in this respect. Among other things, they require flight schools in Canada to produce a satisfactory flight training program, hire properly qualified instructors approved by Transport Canada, ensure the adequacy of the aerodromes used in the training and mandate that students are given pre-flight briefings before each lesson.

Compliance with the CARs, however, does not relieve a flight school of its legal obligations to its students. Flight schools and their instructors (for whom the school is usually liable) owe a separate duty of care to each of their students not to be negligent in undertaking the training. It is an important fact which many find difficult to accept that a flight school may live up to all of the requirements in the CARs and still be held legally responsible to its student pilots. The opposite may also be true: A flight school that is in breach of the CARs may still be held not liable to a student suffering a loss, provided that the violation of the CARs did not cause the damage being sued for.

The law of negligence in Canada is normally found in prior Court decisions. As stated above, there have been very few reported cases on flight training in Canada. A sample is set out below.

Airmotive Industries Ltd. v. Peterson is a 1982 decision of the Alberta Court of Appeal. Peterson, an experienced pilot, was hired by Airmotive to teach one of its owners to fly a newly acquired Piper Comanche PA-30. After climbing to 6,000 feet, Petersen, without warning, as part of the training exercise cut one of the engines to simulate a failure. The student landed the aircraft with one engine in Edmonton to refuel, but not to Petersen's satisfaction. The student asked Petersen not to cut the engine again during the training.

Later that day, Petersen and his student continued the training exercise. As they taxied to the end of the runway, Petersen placed a piece of paper over the controls, and without warning, cut the left engine at a ground speed of 70 mph. The student was unable to control the aircraft, which veered violently and struck the ground some 550 feet off the runway. No one was hurt but the aircraft was damaged. The student sued.

The Court found the instructor negligent for cutting off the engine without warning at a precarious speed, having regard to the student's inexperience and the difficulties he had earlier in maintaining control of the aircraft. The instructor was found negligent,

notwithstanding the fact that the student signed a release against liability. The Court found that, by requesting the instructor not to cut the engine, the terms of the release were altered.

In another case, *St. Catharines Flying Club v. The City of St. Catharines*, the Ontario Court of Appeal ruled on a case involving a student practicing forced solo landings. When the student overran the landing strip, the aircraft collided with some bales of hay. The student was not injured but the school's aircraft was damaged. Instead of suing the student, the school sued the municipality that had placed the bales of hay next to the landing strip. The school's lawsuit failed. The school, itself, was found negligent in authorizing a student with 20 hours of flying time to practice forced landings on a landing strip with bales at the end while facing a setting sun.

In *Johnson Estate v. Pischke*, a 1989 decision of the Saskatchewan Queen's Bench, Johnson, his daughter and his son-in-law set out with an instructor, Pischke, on a flight from Estevan, Saskatchewan to Boise, Idaho. The purpose of the trip was twofold: to pick up a puppy and to allow the son-in-law to complete a cross-country flight as part of his flight training. After a brief planned stop in Livingston, Montana, Pischke obtained weather information and planned the route accordingly. After some minor buffeting over Challis, Idaho, the weather conditions worsened, so Pischke assumed the role of PIC, indicating that it was getting a "little soupy". The stall horns were sounding and the aircraft was losing lift. Pischke attributed this to back pressure and not a stall position. At some point ice formed on the leading edges. He was unable to gain altitude and crashed on a mountain peak in a box canyon. Pischke and Johnson died immediately. The son-in-law and the daughter remained at the crash site for 14 days and walked for 5 days before reaching help. During that time, they were forced to feed on Johnson's remains!

The Court found Pischke to be negligent because he did not meet the standard of care of a "reasonably competent pilot". In particular, he embarked on a flight out of Livingston in the face of weather information forecasting possible turbulence, thunderstorms and icing conditions, without an alternate route, knowing that he was an inexperienced mountain flyer and failing to take appropriate remedial action when the weather worsened.

Finally in *Braun Estate v. Zenair*, a 1998 decision of the Ontario Court of Appeal, a flight instructor gave a demonstration of a new ultra light. During the demonstration, the instructor lost control of the plane and crashed, killing himself and fatally injuring the student. The instructor was held negligent. The Court decided that, notwithstanding a release signed by the student, the flight school was liable because the release was not worded clearly in that it did not explicitly extend to negligent mistakes of an instructor.

In conclusion, it is important to note that the legal doctrine of negligence is quite separate from the regulation of flight training by Transport Canada. Further, flight schools should clearly review their releases, as Courts have been reluctant to enforce them in cases of negligence, unless they are very clearly drafted. Students, on the other hand should consider the consequences of signing these releases, as this may disentitle them to a claim against an otherwise negligent instructor and/or school.

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