

# **The Queen v. Jacques Cloutier**

**PRESENTATION BY  
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The question as to whether or not one of our fellow Canadian pilots exposed himself to liability as a result of an accident on the St. Lawrence River in 2004 has been the object of intense judicial scrutiny over the last five years. The legal process finally came to a conclusion earlier this year and I was asked to say a few words about its outcome.

The purpose of my presentation is not to review all the legal technicalities of the case or to discuss the fine circumstantial or legal points presented during the trial.

I know many lawyers who would be delighted to do just this but I am not one of them! Rather, I want to focus on the simple – but very important – lessons that Canadian pilots took from this experience.

In the early morning hours of August 11<sup>th</sup>, 2004, the container vessel *Canada Senator*, which was being piloted by Captain Jacques Cloutier, was in a narrow navigation channel near Quebec City. The St. Lawrence River was calm and visibility was good.

At around 5:40 am, Pilot Cloutier's attention was drawn to a small sailboat, the *Mondisy*, about two nautical miles away. The sailboat was making continuous circles in a counterclockwise direction. While the *Mondisy* was lit up, no crewmembers were seen on deck.

Having informed traffic control of the sailboat's location and movements, Pilot Cloutier requested that the *Canada Senator* sound a warning of five short blasts.

Despite every possible evasive action by the *Canada Senator* in the minutes that followed and the sounding of another series of warning blasts, there was a direct collision with the sailboat. The *Mondisy* sunk within a few seconds and, unfortunately, two of the four persons on board were lost.

The accident was investigated by inspectors from Transport Canada and, in April 2005, Pilot Cloutier was charged with three penal infractions against the *Collision Regulations* pursuant to the *Canada Shipping Act*.

The first infraction was for failing to maintain a safe speed (Rule 6), the second was for failing to use all means available to determine if a risk of collision existed (Rule 7a), and the third was for failing to take the steps necessary to avoid a collision (Rule 8).

In the end, more credibility was attached to the testimony of the witnesses appearing for the defense and, in his judgment of December 2007, the trial judge dismissed all charges.

What happened next was a great surprise to almost everyone and it remains inexplicable to this day – at least to us. The prosecution appealed the trial judge's decision, despite the fact that his judgment was unequivocal, stating that Pilot Cloutier had used all reasonable means available to assess the situation and to avoid a collision.

The judge went on to say that Pilot Cloutier had actually, at all times during the tense few minutes prior to the accident, demonstrated due care and diligence and that his behavior was consistent with that of a prudent mariner.

In November 2009, the Superior Court of Quebec upheld the decision of the trial judge.

Again, for reasons that we do not comprehend, the prosecution then sought leave to have the Court of Appeal of Quebec reconsider the decision of the Superior Court. Finally, in February 2010, the Court of Appeal denied leave to appeal and Pilot Cloutier's five-and-a-half-year legal nightmare was finally over.

There are at least two very important lessons that can be derived from this saga.

The first is that the demonstration of due care and diligence while discharging one's duties as a pilot is the best possible defense against any accusation of wrongdoing.

While this may seem obvious, it is sometimes easy to somehow lose sight of it; to let your guard down and assume things that should be confirmed; to take shortcuts instead of following established procedure; or to not be as rigorously attentive as one should be during the course of our duties.

In the case of Pilot Cloutier, he ultimately prevailed against what turned out to be an unreasonable prosecution because he did discharge his duties impeccably.

And while the process that he had to go through was certainly very difficult and demanding, it **is** a victory. Actually, **three** victories, as he won three times!

I know pilot Cloutier would have been very happy to avoid all this. But when we say that pilots will be in an excellent position – in terms of not exposing themselves to liability – so long as they demonstrate impeccable due care and diligence in everything they do, this is a very good demonstration.

The second lesson is: be prepared for the cost of a legal defense, which can be very high. If there are pilot groups anywhere in the world that do not have a legal defense fund, or a mechanism to raise the money required to defend one of their members, that deficiency should be corrected quickly.

The pilot undergoing trial will surely be suffering enough from emotional stress, fear of losing his livelihood, and damage to his reputation. The last thing he should have to worry about is how he will afford his own legal defense.