

IN THE FEDERAL COURT

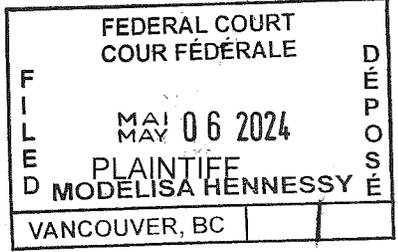
BETWEEN:

SLAVE LAKE HELICOPTERS LTD.

-and-

THE MINISTER OF TRANSPORT, TRANSPORT CANADA

DEFENDANTS



Statement of Claim

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: MAY 06 2024

Issued by: _____ ORIGINAL SIGNED BY
MODELISA HENNESSY
A SIGNÉ L'ORIGINAL
(Registry Officer)

Address of local office:

Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

TO:

MINISTER OF TRANSPORT & TRANSPORT CANADA
Transport Canada
330 Sparks Street
Ottawa, ON K1A 0N5

c/o Department of Justice Canada
British Columbia Regional Office
900 – 840 Howe Street
Vancouver, B.C. V6Z 2S9

Claim

1. The Plaintiff claims:

- (a) A declaration that the Defendants committed the tort of misfeasance in public office;
- (b) General damages;
- (c) Special damages;
- (d) Special costs or alternatively costs;
- (e) Interest; and
- (f) Such further and other relief as this Honourable Court deems just.

The Parties

- 2. The Plaintiff, Slave Lake Helicopters Ltd., ("**SLH**") is a company incorporated pursuant to the laws of Alberta and an air operator within the meaning of the *Canadian Aviation Regulations*, SOR/96-433 ("**CARs**"), with an address for service c/o Clark Wilson LLP 900-885 West Georgia Street, Vancouver, B.C. V6C 3H1.
- 3. The Defendant, Transport Canada ("**TC**"), is a Federal Government department responsible for, among other things, developing regulations, policies and services, and implementation of same for air transportation in Canada.
- 4. The Defendant, the Minister of Transport (the "**Minister**"), is the responsible minister that oversees TC.
- 5. TC and its authorised delegates administer the Minister's various statutory and regulatory powers as contained in the *Aeronautics Act*, RSC, 1985, c A-2 (the "**Aeronautics Act**"), the CARs, and the *Commercial Air Services Standards* ("**CASS**").

The Legislative Framework

- 6. Pursuant to section 4.2 of the *Aeronautics Act*, the "Minister is responsible for the development and regulation of aeronautics and the supervision of all matters connected with aeronautics."
- 7. Pursuant to section 4.9 of the *Aeronautics Act*, the Minister has broad powers to regulate matters concerning air operators, including their certification.

8. The CARs are regulations approved by the Minister under the authority of the *Aeronautics Act*. The CARs concern a broad scope of matters regarding aviation and activities relating to aeronautics.

9. Section 101.01(1) of the CARs provide the following relevant definitions:

(a) ***air operator*** means the holder of an air operator certificate;

(b) ***air operator certificate*** means a certificate issued under Part VII that authorizes the holder of the certificate to operate a commercial air service;

(c) ***Commercial Air Service Standards*** means the standards published under the authority of the Minister that apply in respect of commercial air services operated by air operators;

(d) ***helicopter Class D external load*** means an external load with a person carried externally or any external load, other than a Class A, B or C external load.

10. Part VII of the CARs concern "Commercial Air Services" and section 702.21 specifically regulates the operation of a helicopter Class D external load. It provides as follows:

702.21 (1) Subject to subsection (2), no air operator shall operate a helicopter to carry a helicopter Class D external load unless

(a) the helicopter is a multi-engined helicopter that meets the transport category engine-isolation requirements of Chapter 529 of the *Airworthiness Manual* and that is capable of hovering with one engine inoperative at the existing weight and altitude;

(b) the air operator is authorized to do so in its air operator certificate; and

(c) the air operator complies with the *Commercial Air Service Standards*.

(2) An air operator may operate a helicopter other than a helicopter described in paragraph (1)(a) to carry a helicopter Class D external load if the air operator

(a) is authorized to do so in its air operator certificate; and

(b) complies with the *Commercial Air Service Standards*.

11. CASS 722.21(2)(b) provides the relevant standards for an air operator of Class D external load. This section provides the following:

722.21(2) The standards for authorization to operate a helicopter to carry a Class D helicopter external load using a single-engine helicopter or a multi-

engine helicopter unable to comply with one engine inoperative requirements are:

...

(b) where the load extends below the landing gear:

- (i) the helicopter is equipped to permit direct radio intercommunication among crew members;
- (ii) the personnel carrying device is airworthiness approved for the carriage of human external loads;
- (iii) the load is jettisonable;
- (iv) the helicopter is turbine powered and equipped, where approved for the type, with an auto-ignition system and a detector system to warn flight crew members of excessive ferrous material in the engine(s);
- (v) only flight crew members and persons essential during flight are carried;
- (vi) persons are transported externally between geographical points only to the nearest suitable landing site;
- (vii) the authorization is for the purpose of law enforcement operations, forest fire suppression operations, urban fire fighting operations or rescue operations;
- (viii) the air operator has a formal written agreement from the user of the service and the agreement stipulates that only suitably trained and qualified persons will be assigned; and
- (ix) the air operator's Company Operations Manual includes operational requirements, operational procedures and air operator employee qualification and training requirements.

Overview of SLH's Class D External Load Operations

12. SLH conducts a wide range of helicopter operations.

13. From 2018 through to 2019, SLH conducted Class D external load operations with a single-engine AS350B3e helicopter (the "**AS350**") for forest fire suppression throughout the Province of Alberta. SLH would operate the AS350 to carry firefighters by a long line that extended below the landing gear for the duration of the flight to ground locations for initial attack during fire suppression operations ("**Class D Operations**").

14. SLH conducted the Class D Operations pursuant to the Class D external load regulatory requirements provided for under the CARs and the CASS.
15. On January 30, 2015, the Minister, via TC, specifically approved SLH to conduct Class D Operations by approving such operations in SLH's Air Operator Certificate (the "**Operator Certificate**"). Such approval remains in the Operator Certificate.
16. TC's approval in the Operator Certificate authorises SLH to conduct the Class D Operations with the AS350 and other listed helicopters, and confirms that SLH meets the applicable requirements under CARs 702.21(2).
17. In or around 2015, SLH further approved SLH's Class D Operations by approving SLH's Operations Manual (the "**Operations Manual**") concerning same.
18. In or around 2017, SLH was contacted by the Alberta Wildfire Management Branch (the "**AWMB**") to carry out Class D Operations to assist with forest fire suppression in the Province of Alberta.
19. On or between 2017 to 2018, the AWMB implemented Class D Operations to improve the efficiency and safety of initial attack operation against forest fires for ground locations that were not accessible by helicopter. This technique had firefighters carried by a line that extended below the landing gear of the helicopter.
20. In or around 2018, the AWMB awarded SLH with a two-year contract to carry out Class D Operations throughout Alberta (the "**AWMB Pilot Project**").
21. SLH kept TC fully informed about the nature and scope of the AWMB Pilot Project. In fact, TC was active in reviewing SLH's and AWMB's training processes.
22. In or around April of 2019, TC inspectors Douglas Murray and Mike Craig attended a demonstration and pilot training associated with the AWMB Pilot Project in Elbow Creek fire base, west of Calgary Alberta.
23. Messrs. Murray and Craig inspected SLH's helicopter equipment and documentation and were satisfied with the inspection.
24. Messrs. Murray and Craig permitted SLH's pilot to proceed with next steps, which were Class D external load flight training on a single engine helicopter.
25. Messrs. Murray and Craig witnessed the flight training and did not raise or allege any regulatory violations while they were in attendance or subsequently thereafter.

The Defendant's Unlawful Position as it Concerns CASS 722.21(2)(b)

26. As stated herein, the Minister delegates its authority to TC and their employees as its authorised delegates. Transport Canada's civil aviation operations are further divided among the following regions:

- (a) Atlantic;
- (b) Quebec;
- (c) Ontario;
- (d) Prairie and Northern (“**PNR**”); and
- (e) Pacific.

27. TC also maintains a headquarter office located in Ottawa, Ontario (“**TC HQ**”).

28. TC, and its employees must carry out their functions within the prescribed limits of the law, namely within the limits prescribed by the *Aeronautics Act*, the CARs and the CASS.

29. On March 2, 2020, Mr. Brown, addressed correspondence to “PNR Helicopter Companies” in his capacity as a Technical Team Lead - Flight Operations. This correspondence informed helicopter operators within PNR that its Class D external load operations no longer met CASS 722.21(2)(b) (the “**March Correspondence**”).

30. Mr. Brown informed PNR helicopter operators that the purpose of the March Correspondence was, “to clarify the regulations and standards regarding Class D Rotary Wing Operations.”

31. Mr. Brown, in the March Correspondence, proceeded to provide an interpretation of CASS 722.21(2)(b)(vi) that was inconsistent from what TC had previously communicated to SLH and other Class D helicopter operators, for decades. Mr. Brown provided the following interpretation of CASS 722.21(2)(b)(vi):

If a single or multi engine helicopter is unable to comply with inoperative engine requirements, human external cargo may only be transported from a pickup location where a suitable landing site does not exist, to the nearest suitable landing site. As there is an increased risk to persons being carried externally, the authority for human external cargo carried below the landing gear is intended for the emergency extraction of a person in life-threatening circumstances when no other option exist, such as extracting an injured hiker off a mountainside and take them to the nearest place of safety.

Operators that are unable to sustain flight with one inoperable engine are not permitted to insert firefighters into an area for firefighting, which is not large enough to land a helicopter. For the insertion of firefighters into forest fire areas where a rapid response is necessary and suitable landing sites do not exist, rappelling from a properly equipped and authorized helicopter is the recommended operational technique.

32. Mr. Brown's interpretation of CASS 722.21(2)(b)(vi) was arbitrary and unfounded in law (the "**Unlawful Position**").
33. SLH soon became aware of the March Correspondence and the Unlawful Position.
34. The Unlawful Position contradicted TC's decades old position concerning the meaning and enforcement of CASS 722.21(2)(b).
35. SLH disagreed with the Unlawful Position and communicated to TC that the Unlawful Position ran contrary to the purpose and history of the CARs and CASS.
36. SLH and TC maintained lengthy discussions, correspondence and meetings regarding the purpose of the CARs, the CASS and the impact of the Unlawful Position.
37. On March 17, 2023, SLH and other industry officials held a meeting with the following TC representatives:
 - (a) Andy Cook – Associate Director General, Civil Aviation;
 - (b) Linda Melnyk – RDCA, PNR; and
 - (c) Marie Claude Day, Senior Counsel, Legal Department.
38. The purpose of the meeting was to address the Unlawful Interpretation and provide TC with the history and intent of the relevant regulatory regime concerning Class D external load operations.
39. Following SLH and TC's communication, TC, via Mr. Cook, held that the Unlawful Position was not a change in the interpretation of CASS 722.21(2)(b).
40. TC's PNR office has continued to enforce the Unlawful Position since the March Correspondence, which has terminated SLH's Class D Operations.

SLH's Discovery of TC's Misfeasance – Unlawful Position

41. In or around September 2023, SLH initiated several Access to Information Act and Privacy ("**ATIP**") requests concerning TC records and files related to and giving rise to the Unlawful Position.
42. Upon reviewing the ATIP request records in or around February 2024, SLH discovered material facts giving rise to the Unlawful Position. These material facts, include, but are not limited to, the following:
 - (a) on or about August 10, 2018, TC HQ, via TC officer Robert Freeman, confirmed that the Class D external load operation identical to the Class D Operations

conducted by SLH in the AWMB Pilot Project was an accepted practice within the meaning of the CARs and CASS;

(b) on or about January 28, 2019, for a reason unknown to SLH, Mr. Craig initiated further discussions with TC's PNR office regarding Class D external load operations; and

(c) shortly after Mr. Craig's above inquiry, the PNR office re-engaged into a conversation with TC HQ regarding a possible reinterpretation of CASS 722.21(2)(b).

43. Upon reviewing the ATIP request records on or about February 2024, SLH also discovered material facts giving rise to an action for misfeasance in public office against the Defendants as it relates to the Unlawful Position.

44. Specifically, the ATIP records contained various pieces of correspondence between Mr. Brown and other TC public officers, which indicate that the Unlawful Position was arbitrarily formed by TC public officers acting without lawful authority.

45. For instance, SLH accessed and reviewed several pieces of correspondence from Mr. Brown to other TC public officers created between January and February 2020. The correspondence included the following, but not limited to, material facts:

(a) TC HQ permitted SLH and other Class D external load operators to conduct such operations;

(b) TC HQ permitted SLH's Class D Operations as they were inspected at the AWMB Pilot Project;

(c) on or about January 2020, Mr. Brown led the reinterpretation movement of CASS 722.21(2)(b) within TC;

(d) Mr. Brown explicitly stated that TC's internal policy regarding Class D external load operations had changed significantly;

(e) Mr. Brown stated he was promised (presumably from an executive TC official or ministerial official), that the CARs would be amended to support what would become the Unlawful Position;

(f) Mr. Brown stated that even though the CARs were not amended as promised, he would still deliberately proceed with the Unlawful Position and requested other TC officials to follow suit, knowing that he and TC did not have a legal basis for the Unlawful Position;

- (g) Mr. Brown stated that SLH initiated capital expenditures and sought contracts such as the AWMB Pilot Project due to TC's longstanding authorization for SLH to conduct Class D Operations;
- (h) Mr. Brown knew SLH would not be able to further conduct the Class D Operations as a result of the Unlawful Position;
- (i) Mr. Brown stated class D operators will be surprised by the Unlawful Position; and
- (j) Mr. Brown requested TC HQ to institute several policies and directives to support what would become the Unlawful Position.

46. TC HQ did not issue policies or directives in support of the Unlawful Position as requested by Mr. Brown.

47. Regardless, Mr. Brown initiated the March Correspondence which instituted the Unlawful Position, even though he knew that the Unlawful Position had no basis in law and would harm SLH and other Class D external load operators.

48. In addition to Mr. Brown, the following individuals and entities were aware of the legal arbitrariness of the Unlawful Position and the harm it would cause Class D external load operators such as SLH, but still supported the Unlawful Position and its enforcement nonetheless:

- (a) TC;
 - (b) Gordon Manuel;
 - (c) Richard Jasmin;
 - (d) Christine Lodge;
 - (e) Mike Craig;
 - (f) Andy Cook;
 - (g) Deborah Martin;
 - (h) Linda Melnyk; and
 - (i) such further and other TC public officials unknown to SLH at this time but as they may become known through discovery.
- (collectively, with Mr. Brown, the "**Public Officers**").

The Public Officers' Misfeasance

49. The Public Officers were aware they were acting *ultra vires* their official power. Rather than following the proper legal procedure, they acted without lawful authority and advanced the Unlawful Position.
50. The Unlawful Position was made for collateral political or otherwise improper reasons having no relation to the merits or legality of SLH's Class D Operations.
51. The Unlawful Position is incorrect at law, as the wording of the relevant provisions of the *Aeronautics Act*, CARS and CASS have remained unchanged at all material times.
52. The Unlawful Position has the effect of arbitrarily reading in wording into the CASS that do not exist.
53. In fact, Mr. Brown directly noted that the CARs were not amended to support the Unlawful Position, but the Public Officers pursued the Unlawful Position regardless.
54. Accordingly, in exercising their powers, the Public Officers, knowingly made invalid, unlawful and *ultra vires* decisions with the knowledge that such decisions were to cause damage to SLH – or in the alternative with reckless indifference to the possibility that those decisions were likely to cause damage to SLH.
55. In the alternative, the Public Officers specifically intended to injure Class D External Load operators such as SLH, though the Unlawful Position

Causation and Damages

56. SLH incurred significant financial costs and subsequent loss through its investment in its Class D Operations.
57. For instance, in reliance on the AWMB Pilot Project, and TC's approval of SLH's Class D Operations, SLH incurred significant capital expenditure to prepare and set up the AWMB Pilot Project. These expenditures included, but are not limited to, \$3,000,000 for the purchase of the AS350, \$130,000 for the purchase of BOOST HEC Systems, consulting fees, hiring and training of an additional pilot and lost Revenue (the "**Expenditures**").
58. SLH expected that the AWMB Pilot Project would continue past its two-year initial phase. At no time did SLH ever anticipate that TC would change its interpretations of the regulatory regime that allows for its Class D Operations.
59. SLH incurred the Expenditures and a corresponding loss due to the conduct of the Public Officers via the Unlawful Position.

60. The Unlawful Position did cause damage to SLH.

61. The Public Officers owed a duty to SLH to act lawfully.

The plaintiff proposes that this action be tried at Vancouver, British Columbia.

Date: May 3, 2024

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of MAY 06 2024 A.D. 20____

Dated this _____ day of MAY 06 2024 20____



**MODELISA HENNESSY
REGISTRY OFFICER
AGENT DU GREFFE**



Brian C. Poston and Imroz Ali
Counsel for the Plaintiff
Slave Lake Helicopters Ltd.

Clark Wilson LLP
900 – 885 West Georgia Street,
Vancouver, BC V6C 3H1
Tel: (604) 687-5700
Fax: (604) 687-6314
Email: BPoston@cwilson.com
IAli@cwilson.com

SOR/2021-150, s. 12