Transport Canada Transports Canada

Staff Instruction

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1.0 INTRODUCTION

1.1 Purpose

(1) The purpose of this Staff Instruction (SI) is to describe the procedures to be used by all Headquarters and Regional Enforcement Personnel when authorized enforcement duties and responsibilities are to be performed. All Enforcement Personnel are to employ the applicable procedures contained in this SI.

(2) This SI details enforcement actions to be taken in the inspection/investigation of possible contraventions of the Canadian Aviation Regulations, and contains procedures, based on the level of assessed risk, that take a progressive, graduated approach to enforcement.

1.2 Applicability

(1) This document applies to Headquarters and Regional Enforcement Personnel.

1.3 Description of Changes

(1) The major changes are:

- (a) Subsection 2.3: Definitions added; Administrative/Fact Finding Investigation, Penal (Judicial) Investigation.
- (b) Section 6 has been extensively restructured and amended to comply with requirements of the Center of Enforcement Expertise Deskbook.

(2) As a result of updating this document, a number of small editorial changes have been made to this document as well as to the associated French version (RDIMS - 12922873).

2.0 REFERENCES AND REQUIREMENTS

2.1 Reference Documents

(1) It is intended that the following reference materials be used in conjunction with this document:

- (a) *Canadian Charter of Rights and Freedom*, Part I of the Constitutional Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;
- (b) *Access to Information Act* (R.S., 1985, c. A-1);
- (c) *Aeronautics Act* (R.S., 1985, c. A-2);
- (d) *Canada Evidence Act* (C-5);
- (e) *Canada Labour Code* (R.S., 1985, c. L-2);
- (f) *Criminal Code of Canada* (R.S.C. 1985, c.46);
- (g) *Criminal Records Act* (C-47);
- (h) *Federal Courts Act* (F-7);
- (i) *Interpretation Act* (I-21);
- (j) *Privacy Act* (R.S., 1985, c. P-21);
- (k) *Statutory Instruments Act* (R.S., 1985, c. -22);
- (l) *Youth Criminal Justice Act* (2002, c.1).

(m) *The Canadian Aviation Regulations* (CARs);

(n) *Convention of International Civil Aviation Organization* (ICAO), 1947-04, Article 12;

(o) *Concise Oxford English Dictionary* (or Le Petit Robert) (1990);

(p) TC/RCMP MOU;

(q) Procedural Protocol between NAV CANADA and Transport Canada Civil Aviation (TCCA) Respecting the Provision of Information related to Alleged Contraventions of the Aeronautics Act and the Canadian Aviation Regulations – 2009-04-24 RDIMS 4236889;

(r) RDIMS 3858700- *Aviation Enforcement Detection Sources*;

(s) Transport Canada Publication (TP) 111, *Transport Canada Records Disposal Schedules- Retention Periods Aviation Regulation*;

(t) TP 13794, *Aviation Enforcement Policy Manual*;

(u) TP 14371, *Transport Canada Aeronautical Information Manual*;

(v) TP 385, *Commercial and Business Aviation Dangerous Goods Inspector's Manual*;

(w) TP 4711, *Air Operator Certification Manual*;

(x) Civil Aviation Directive (CAD) 40 - *Information Management in Civil Aviation - Records Document and Information Management System*;

(y) CAD 107-004, *Aviation Enforcement- Safety Management Systems*; and

(z) Staff Instruction (SI) SUR 006, *Safety Management Systems- Civil Aviation Non-Compliance Event Review*;

2.2 Cancelled Documents

(1) Not applicable.

(2) By default, it is understood that the publication of a new issue of a document automatically renders any earlier issues of the same document null and void.

2.3 Definitions and Abbreviations

(1) The following **definitions** are used in this document:

(a) **The Act**: Refers to the *Aeronautics Act*;

(b) **Administrative Action:** Deterrent action taken by or on behalf of the Minister, including oral counselling, suspension or cancellation of a Canadian Aviation Document and imposition of a monetary penalty;

(c) **Administrative / Fact Finding Investigation:** A non-penal investigation resulting from an incident or discovery of non-compliance. The purpose of such an investigation is to uncover facts that led to certain events or cases of non-compliance, identify causes, document a case and address the situation with an appropriate enforcement response (other than penal prosecution). Such investigations will generally be conducted using statutory inspection-based powers and authorities. They may also make use of penal investigative tools, particularly if prosecution remains a possibility.(from RDIMS 10404903, p. 5)

(d) **Canadian Aviation Document**: Any licence, permit, accreditation, certificate or other document issued by the Minister under Part I of the Aeronautics Act to or with respect to any person or in respect of any aeronautical product, aerodrome, facility or service;

(e) **Compliance:** Conformity with the provisions of the regulations;

(f) **Comprehensive Investigation**: The follow-up to the initial enforcement process to obtain conclusive evidence as to whether or not a violation occurred so that appropriate deterrent action can be taken;

(g) **Criminal Activity:** Any act that is illegal under the Criminal Code of Canada and is clearly outside the scope of responsibility of Transport Canada Civil Aviation (TCCA) Safety and Security;

(h) **Crown:** Crown Counsel is any lawyer representing the interests of the government during criminal proceedings;

(i) **Designated Provisions:** Regulations specified in section 103.08 of the CARs for which deterrent action is limited to administrative measures; judicial action cannot be taken. The majority of the offence-creating provisions of the CARs have been designated;

(j) **Deterrent Action**: Administrative or judicial measures taken in response to a violation in order to encourage future compliance;

(k) **Enforcement Action**: The steps including deterrent action that must be taken from the moment a possible violation of the regulations has been detected until the case is concluded;

(l) **Enterprise Manager**: The TCCA inspector identified by senior management as being the accountable manager responsible for oversight of all parts of the activities of an enterprise with a Safety Management System (SMS), is the enterprise manager;

(m) **Functional Authority**: Technical services within Civil Aviation grouped by aeronautical knowledge or skills (such as General Aviation, Air Navigation, etc.) within which there may be further specialization (e.g. Personnel Licensing, Enforcement, Aircraft Evaluation, etc.). Functional authority includes the prerogative of a functional specialist to prescribe how the activity within the specialist's area of expertise should be carried out;

(n) **Functional Direction**: The exercise of functional authority through the issuing of and ensuring compliance with policies and procedures and through the provision of advice to line managers and subordinates;

(o) **Hybrid Offence**: Any offence that may be proceeded against by way of indictment or by way of summary conviction procedures;

(p) **Indictable Offence**: An offence that is considered very serious, that carries with it the possibility of a severe penalty and that must be proceeded with by way of indictment. Several Criminal Code offences that are related to aeronautics are indictable offences. Some offences under the Act may be addressed by indictment;

(q) **Indictment Procedure**: The accused has a choice of courts in which he or she may be tried. Depending on that choice, the accused may have a preliminary hearing and a jury trial (See Section 11 of this SI for more detail);

(r) **Initial Enforcement Process**: The immediate actions taken on observing or being apprised of a violation. The gathering of information concerning the occurrence and, when an infraction has occurred, the decision to conclude the case with oral counselling or the sending of the information to Enforcement for further investigation;

(s) **Inspector**: Any TCCA aviation official with appropriate authority under the Consolidated Record of Authorities document;

(t) **Investigator:** An Enforcement inspector;

(u) **Joint Covert Operation**: A covert operation involving TCCA aviation officials in cooperation with another agency or police force;

(v) **Line Authority**: The prerogative of line managers to direct the activities of the staff and resources for which they are responsible;

(w) **Minister:** The Minister of Transport and all persons with ministerial authority to act on his behalf in aeronautics matters;

(x) **Negligence**: Conduct falling below the standard required for the protection of others against unreasonable risk of harm;

(y) **Night Time**: For the purpose of an investigation, official “night time” will be determined by using the tables in the Air Almanac;

(z) **Non-Designated Provisions**: The CARs that have not been designated under section 103.08 of the CARs and therefore, if contravened, must be addressed by document suspension or through judicial action;

(aa) **Offence-Creating Provision**: A legislative provision that mandates a certain form of conduct or prohibits certain conduct;

(bb) **PENAL (JUDICAL) INVESTIGATION**: An investigation where the predominant purpose of the inquiry is to establish a penal liability (i.e. to gather evidence of a specific offence with a view to supporting penal charges and a prosecution). Tools to conduct penal investigations are typically found in the Criminal Code and include search warrants, production orders and the use of caution statements (from RDIMS 10404903, p. 6)

(cc) **Reasonable Grounds To Believe**: The knowledge of facts that would lead a reasonable person of ordinary intelligence and prudence to believe;

(dd) **Recklessness:** Conduct that shows deliberate disregard of, or indifference to, the consequences of one’s actions under circumstances involving risk of harm to life or property;

(ee) **Regulations:** The Canadian Aviation Regulations;

(ff) **Summary Conviction Offence:** An offence that is considered to be less serious than an indictable offence and accordingly carries with it a less severe penalty;

(gg) **Summary Conviction Procedure:** There is no choice of court; the trial procedure takes place in a provincial court. There is no right to have a preliminary inquiry and there is no right to a trial before a jury;

(hh) **Third Party Agents**: Persons employed specifically for the purposes of a covert operation excluding police officers, other agency personnel or TCCA inspectors;

(ii) **TCCA Aviation Official**: Any officer of TCCA Safety and Security whose duties on behalf of the Minister are related to the safe and lawful operation of the Canadian air transportation system; and

(jj) **Violation**: The breach of any offence-creating provision.

(2) The following abbreviations are used in this document:

(a) **AJ:** Departmental General Counsel, Transport Canada;

(b) **AOC**: Air Operator Certificate;

(c) **ATC**: Air Traffic Control;

(d) **ATS:** Air Traffic Services;

(e) **ATSAMM:** NAV CANADA Air Traffic Services Administration and Management Manual;

(f) **CAD:** Civil Aviation Directive;

(g) **CE:** Chief, Enforcement;

(h) **CADORS:** Civil Aviation Daily Occurrence Reporting System;

(i) **CARs**: Canadian Aviation Regulations;

(j) **CFAOC:** Canadian Foreign Air Operator Certificate;

(k) **CFAOC (FTA):** Canadian Foreign Air Operator Certificate – Free Trade Agreement;

(l) **CPO:** Case Presenting Officer;

(m) **DGCA**: Director General, Civil Aviation;

(n) **DOJ:** Department of Justice;

(o) **EMS:** Enforcement Management System;

(p) **FAA:** Federal Aviation Administration –United States (U.S.);

(q) **FID:** Foreign Inspection Division;

(r) **FTA:** Free Trade Agreement;

(s) **MANOPS:** NAV CANADA Manual of Operations;

(t) **NFA:** No Further Action;

(u) **PAA:** Program Activity Architecture

(v) **PPSC:** Public Prosecution Service of Canada

(w) **RDCA**: Regional Director Civil Aviation;

(x) **RME:** Regional Manager, Enforcement;

(y) **SMS**: Safety Management System as defined in Section 101.01 of the CARs;

(z) **TATC:** Transportation Appeal Tribunal of Canada;

(aa) **TCCA:** Transport Canada Civil Aviation;

(bb) **TCSS:** Transport Canada Safety and Security; and

(cc) **TI:** Technical Inspector.

3.0 BACKGROUND

3.1 Enforcement

(1) Aeronautics legislation, comprising the *Aeronautics Act* and the *Canadian Aviation Regulations* (CARs), has been developed to promote a safe and harmonized aviation culture for Canadians, for air travelers in Canada, and for Canada's aviation industry as a whole. The Civil Aviation Program Manual describes Civil Aviation's role in the Transport Canada Program Activity Architecture (PAA), and identifies that enforcement (when required) is a key part of the aviation safety oversight activity (PAA 3.1.2). For the purpose of enforcing compliance with aviation legislation, Part I of the Act gives the Minister the authority to assess punitive measures in respect of contraventions of any provisions of Part I, or any regulations made under the authority of Part I or of any regulation, notice, order, security measure or emergency direction made under Part I. The Enforcement Division of TCCA acting under the authority of the Minister is the TCCA division responsible for investigating contraventions and assessing the punitive measures authorized under the Act.

(2) This SI provides guidance for Enforcement inspectors conducting investigations of contraventions to the Act or the CARs.

3.2 Access to Information in the Staff Instruction

(1) This Staff Instruction (SI) is intended for use within the department and is not a document intended for access by the general public. Requests for copies of the SI or for information contained therein should be forwarded to Enforcement Headquarters.

4.0 ENFORCEMENT DETECTION HANDLING PROCESS

(1) The following process is illustrated in a Flow Chart in RDIMS 3858700.

(2) This process does not apply when the detection information is received directly from the enterprise manager for an enterprise with a Safety Management System (SMS) when the enterprise manager is forwarding the detection information to Enforcement in accordance with SI SUR-006 *Civil Aviation Non-Compliance Event Review Process*. In such cases, the RME is to evaluate the detection information for potential enforcement action and assign the event for further investigation where appropriate.

4.1 Evaluation of Detection Information

(1) In cases where an enforcement inspector detects a contravention or where information about a possible contravention is received, the manner in which Enforcement handles the information depends on four pivotal considerations specifically:

(a) First Consideration: Is the information or event reported through the Civil Aviation Daily Occurrence Reporting System (CADORS)? The Civil Aviation Regional offices are to systematically monitor the CADORS and other reporting services in their Region in order to identify any possible violations concerning reported events. This first circumstance makes the reasonable assumption that if the information was received through the CADORS then all functional authorities within Civil Aviation are aware of the information.

(b) Second Consideration: Is the information or event related to an enterprise with an SMS? This second circumstance creates the necessary structure that establishes whom, within Civil Aviation is primarily or initially responsible for processing the information and initiating required action even if subsequent action is ultimately the responsibility of another functional authority.

(c) Third consideration: Is the event an accident? In accordance with Enforcement policy, an Enforcement Management System (EMS) investigation file is opened for all aircraft accidents, other than those involving an aircraft operated by an enterprise with an SMS, in order to conduct a routine systematic investigation related to the validity of the documentation of the aircraft and personnel involved.

(d) Fourth Consideration: Is the event related to a contravention of Section 602.105 of the CARs respecting operation of an aircraft in the vicinity of an aerodrome during hours when aircraft operations are prohibited or restricted (Paragraph 602.105(c) of the CARs)?

4.2 Civil Aviation Daily Occurrence Reporting System Report - Enterprise with a Safety Management system (or individual)

(1) The Civil Aviation SMS Enforcement Policy does not apply to contraventions of Subsection 602.105(c) of the CARs, respecting operation of an aircraft in the vicinity of an aerodrome during hours when aircraft operations are prohibited or restricted. In cases where Enforcement becomes aware of a contravention of Paragraph 602.105(c) of the CARs, an EMS Preliminary Review file must be opened and assigned for further investigation in accordance with Enforcement Procedures. Liaison with the enterprise's Enterprise Manager (EM) should be carried out as required and in accordance with procedures in this SI.

(2) Should the non-compliance event (other than contravention of Paragraph 602.105(c) of the CARs) being reported through a CADORS be related to an enterprise with an SMS or its personnel, Enforcement need not open an EMS Preliminary Review file. The EM responsible for oversight of that enterprise is technically aware of the event due to CADORS monitoring, and will inform Enforcement if an enforcement investigation is appropriate or required under the circumstances.

(3) At the request of an EM, Enforcement must provide support by advising them on appropriate responses to contraventions. Providing support includes collecting or securing perishable evidence on request of the EM.

(4) In the event that the EM requests Enforcement to initiate an investigation of a non-compliance event, the enterprise, rather than the individual that committed the contravention, must be cited as the offender.

Note:

In certain circumstances, the EM may determine it appropriate to initiate an investigation against an individual who is no longer in the employ of the enterprise implicated in the non-compliance event. In these cases, the EM must inform Enforcement that the individual, rather than the enterprise (or in addition to it), is to be identified as the subject of investigation.

(5) Information derived from an internal reporting process or a flight data monitoring process established under an SMS must not be used as evidence for enforcement action.

4.3 Civil Aviation Daily Occurrence Reporting System Report - Enterprise without a Safety Management system (or individual)

(1) Where the information being reported through a CADORS is related to an enterprise without an SMS or to an individual who is not acting on behalf of an enterprise with an SMS, and the event is not an accident but involves an apparent contravention, an EMS Preliminary Review file is to be opened.

4.4 Civil Aviation Daily Occurrence Reporting System Report – Accident

(1) Where information reported through the CADORS is related to an accident (third consideration) involving an aircraft being operated by an enterprise without an SMS, or an individual who is not acting for an enterprise with an SMS, an EMS preliminary review file is to be opened, and the RME must assign it for investigation. This investigation is intended to verify that personnel licensing, aircraft certification/airworthiness, and certificate holder credentials were in order at the time of the accident. Where there is no apparent recorded irregularities, the EMS investigation case file may be closed, subject to re-activation where indicated either through the course of any Transportation Safety Board investigation/finding, or on receipt of additional information not previously known or available.

4.5 Detection of Contravention – Enterprise with a Safety Management System

(1) Where initial detection information related to an alleged contravention, committed by an enterprise with an SMS or their personnel, is received from a detection source other than CADORS, an EMS Preliminary Review File is to be opened.

(2) Where there are reasonable grounds to believe that a person or enterprise conducting activities under an SMS may have committed a contravention, other than a contravention of Paragraph 602.105(c) of the CARs, the EM must be notified using the letter template in Appendix E of this SI.

Note:

The Civil Aviation SMS Enforcement Policy does not apply to intentional contraventions committed by an Enterprise with an SMS. The EM is responsible for determining whether the contravention was intentional and is the person that decides whether or not the contravention falls outside the scope of process identified in SI SUR-006 – Civil Aviation SMS Non-Compliance Event Review Process.

(3) Following notification of the EM, the EMS Preliminary Review File is to be closed No Investigation Conducted (NIC)-SMS, following an interval of not less than 30-days to facilitate possible requests from the EM for evidence such as ATC tapes or until such evidence is no longer required or available. The EMS file is to contain a notation to the effect that the EM has been notified.

(4) When requested, Enforcement will provide effective support to the EM by advising on the appropriate response to contraventions, in order to ensure that if enforcement action is taken, it will be effective. Providing support includes collecting or securing perishable evidence.

(5) An enforcement investigation must only be initiated upon the request of the EM. Subsequent to such a request, the information is to be entered in EMS. The certificate holding organization is to be identified as the alleged offender.

(6) No information derived from an internal reporting process or flight data monitoring process established under an SMS will be used as evidence for enforcement action.

4.6 Detection of Contravention – Enterprise without a Safety Management System (or individual)

(1) Where initial detection information related to an alleged contravention is received from a detection source other than CADORS, and the event is not related to an enterprise with an SMS or its personnel, Enforcement must open an EMS Preliminary Review file and initiate the enforcement process.

5.0 ANALYSIS OF LEGISLATIVE PROVISIONS

5.1 Introduction

(1) This section provides a procedure for analyzing offence creating legislative provisions to obtain a precise interpretation and to determine the facts and evidence required for their enforcement. The decision to continue or terminate a case is often based on the results of the analysis of legislation. Enforcement investigators will complete an analysis of each provision, which has been contravened for each case where a comprehensive investigation is conducted. Non-enforcement inspectors are encouraged to complete an analysis of the provisions they suspect have been contravened in order to ensure sufficient and appropriate evidence is gathered during the initial enforcement process.

5.2 Construction of Legislative Provisions

(1) Types of Legislative Provisions: Legislative provisions may be enabling, administrative, informative or offence creating. Only the latter can be the subject of enforcement actions.

(a) Enabling provisions are those, which confer power on persons to make some other types of standard or policy. Some enabling provisions in the Act and CARs are those, which give powers to make regulations, orders and publications. For example: Section 4.7(2) of the Act;

(b) Administrative provisions confer a power or impose a duty on the Minister; for example, to issue licenses. They may provide criteria used in discharging these powers or duties.

Although these provisions are public notice of what the Minister can do, their purpose is to provide a statutory basis for administrative procedures or actions. For example: Section 401.38 of the CARs and Section 603.02 of the CARs;

(c) Informative provisions are intended to guide the aviation community and assist individuals in complying with aeronautics legislation. For example: Section 103.11 of the CARs; and

(d) Offence creating provisions can be one of two types; first, those which mandate a certain form of conduct and, second, those which prohibit certain conduct. Non-compliance with these provisions is a violation that can result in judicial or administrative enforcement action. For example: Subsection 103.02(1) of the CARs and Section 201.01 of the CARs;

Note:

The legislative provisions of interest in this section are the "offence creating provisions" and are often referred to as safety regulations. They are easy to recognize as they contain words such as, "No person shall", "an operator shall", and "the pilot-in-command shall."

(2) A provision is composed of legislative elements. Precise interpretation requires analysis of the various elements of a legislative provision. An element is a segment, either a single word or group of words, which expresses a unit of thought. Every element contributes to the total meaning of the legislative provision. Core elements contain the subjects and verbs while qualifying elements describe or modify core elements. Common elements are those, which appear frequently in the legislative provisions (e.g. "no person", "shall fly", "aircraft", "pilot-in-command"). Uncommon elements are those, which do not appear frequently (e.g., "legal custody and control", "accredited representative", "influence of alcohol").

5.3 Identify Possible Violations

(1) During the early stages of a comprehensive investigation, investigators should list all possible violations, not necessarily in order of importance, then select the corresponding legislation that should be analyzed. A timely analysis will indicate what evidence is available and what further evidence may be required; it could also determine that there is, in fact, no violation.

5.4 Analysis of Offence Creating Legislative Provisions for Interpretation

(1) Analysis for interpretation consists of the following steps:

(a) Divide the legislative provision into elements, (e.g., (No person) (shall fly) (a helicopter) (on a Sunday));

(b) Determine the applicability of each element;

(c) If a meaning is unclear and there are no pertinent regulatory definitions, use Oxford dictionary meanings;

(d) Determine the modifying effect of the qualifying elements; and

(e) Summarize the results to arrive at the interpretation.

5.5 Analysis of Offence Creating Legislative Provisions for Evidence

(1) Where a contravention is suspected, the pertinent legislative provisions should be divided into elements and analyzed for interpretation. The facts that need to be established to prove a contravention and the forms and sources of evidence, which tend to establish those facts, must then be determined.

(2) This is done by first classifying the elements as common or uncommon elements. Standard forms of evidence are used to establish the facts concerning common elements. Special forms of evidence may be needed to establish the facts concerning uncommon elements.

5.6 Standard Forms of Evidence

(1) Standard forms of evidence include witness statements, oral testimony, admissions, tape recordings, photographs, objects and documentary evidence such as journey logs, technical logs and business records.

5.7 Special Forms of Evidence

(1) Special forms of evidence include voice-prints, x-rays, magnaflux, dyecheck, etc.

5.8 Standard Analysis for Enforcement Specialists

(1) All designated provisions are automatically accessible in EMS separated in elements and presented in the form of a table.

5.9 Sample Analysis

(1) The following matrix illustrates a method of analyzing the common elements of many legislative provisions and some uncommon elements for relevant evidence.

5.10 Illustrative Analysis of Common Elements

Elements	Facts To Be Established	Evidence
#1 [no person] • Core element • Sets out prohibition applying to all persons.	What person performed the prohibited act?	"Standard forms" to identify the person: Log book; witness For a corporation, refer to registry office for legal name; obtain Certificate of Incorporation from Registrar of Companies. Certificate Application File
#2 [shall fly] • Core element • Describes the prohibited act	The person acted as pilot-in-command, co-pilot, flight navigator or flight engineer; when and where. ***Note:*** *The duties of these "flight crew members" are not defined. Conclusions must be drawn from expert knowledge.*	"Standard forms": Log book; witness.
#1 [attempt to fly] • Core element • Describes the prohibited act	The person intended to fly or made an endeavour to fly; when and where.	Evidence of overt acts showing intent or endeavour to fly, e.g. filing of flight plan, request for clearance.

#4 [aircraft] [no aircraft] • Core or qualifying element	The object referred to was an aircraft, as defined in Section 3 of the *Act*. The aircraft must be identified.	"Standard forms": Log book; Certificate of Registration (C of R); witness. Secretary's Certificate Subsection 27(2) of the *Act* requests that certificate indicate status on date of offence.
[the pilot-in-command] • Defined in Section 3 of the *Act* • Usually a core element	The suspected violator was the "pilot-in-command".	"Standard forms": Log book, witness.
[operate] • Core element • Not defined in Section 101.01 of the CARs. • "to work or use a machine" (dictionary definition)	The action of operating was performed by the suspected offender. With respect to an aircraft, "operate" includes "fly" as a pilot.	"Standard forms": Log book; witness; Flight Plan; Air Traffic System (ATS) record.

5.11 Illustrative Analysis of Uncommon Elements

(1) For Common Elements, see previous table.

(2) #1 [no person], #2 [shall fly], #3 [or attempt to fly], #4 [an aircraft]

Uncommon Elements	Facts to be established	Evidence
#5 [unless a flight authority issued under the CARs is in effect in respect of the aircraft] • Qualifying element	(a) no such flight authority has been issued. (b) if issued, flight authority was not in effect at the time.	For fact (a): use Secretary's Certificate under Subsection 27(2), *Act*. For fact (b): show that the standard for a flight authority to be in effect was not met at the time.

#6 [or unless a flight authority issued under the laws of the country in which the aircraft is registered is in effect in respect of the aircraft] • Qualifying element	(a) no such flight authority has been issued. (b) if issued, flight authority was not in effect at the time.	For fact (a): Affidavit from the proper authority of the country. For fact (b): Same as (a) and expert testimony.
#7 [and unless all conditions upon which the certificate or permit was issued have been complied with] • Qualifying elements	Such conditions were not met at the time. *Note:* Conditions of issue are inscribed on the flight authority.	Produce a true copy of respective flight authority certified by the Secretary pursuant to Subsection 27(1), *Act*.

5.12 Analysis Matrix – Subsection 605.03(1) of the *Canadian Aviation Regulations*

(1) Subsection 605.03 (1) of the CARs states that no person shall operate an aircraft in flight unless:

(a) A flight authority is in effect in respect of that aircraft;

(b) The aircraft is operated in accordance with the conditions set out in the flight authority; and

(c) Subject to Subsections 605.03(2) and 605.03(3) of the CARs, the flight authority is carried on board the aircraft.

Elements	Facts to be established	Evidence
#1 [no person] • A common element and a core element • The prohibition applies to all persons	What person performed the prohibited act?	"Standard forms" to identify the person.
#2 [shall operate… in flight] • A common element and a core element • Specifies the prohibited action	A flight took place	"Standard forms" – Journey log, eye witness, ATS record, etc. – showing that the aircraft was operated in flight.
#3 [an aircraft] • A common element and a core element • Augment the prohibited action	The object referred to was an aircraft, as defined in Section 3 of the *Act.* The specific aircraft must be identified.	"Standard forms" – Journey log, C of R, eye witness – to identify the particular aircraft.
#4 [unless a flight authority is in effect in respect of the aircraft] • A common element and a qualifying element	(a) Flight authority was not issued. (b) Flight authority was not in effect.	(a) Secretary's Certificate Subsection 27(2) of the *Act*

		Requests that certificate indicates status of aircraft on date of offence. (b) (b) Documents or expert evidence showing why flight authority was not in effect.
#5 [and unless the aircraft is operated in accordance with the conditions set out in the flight authority] • An uncommon element and a qualifying element	(a) The manner of operation that was not in accordance with the flight authority, (b) A manner of operation prescribed by the flight authority that was not carried out.	"Standard forms" – Journey log, eye witness, flight plan – showing deviance from conditions of the flight authority.
#6 [and unless the flight authority is carried on board the aircraft subject to Subsections (2) and (3) of the *Act*] • A common element and a qualifying element	(a) Flight authority was not carried on board the aircraft. (b) Show Subsections (2) and (3) of the *Act* do not apply (the subsections are not addressed in this example).	"Standard forms" – Eye witness – showing the flight authority was not carried on board the aircraft.

6.0 INVESTIGATIONS

6.1 Introduction

(1) An investigation is a systematic search for and documentation of the facts relevant to an event from which a decision to take appropriate action can be made. It is the most significant phase of the enforcement process since subsequent action that may affect both individual rights and public safety will depend on its thoroughness and adequacy. In order for investigators to conduct thorough investigations from the initial detection of the contravention through to completion of the case report (see Appendix A for more details on the case report), it is imperative that they have a thorough understanding of their delegation of authority and a sound knowledge of their inspection and investigative powers. Investigators must also know what constitutes relevant evidence if TCCA is to bring an action against an alleged offender because the only means available to prove that the violation has taken place is through obtained evidence.

(2) The Act and the CARs apply to all persons and all aeronautical products and other things in Canada, (which includes foreign civil aircraft and persons while in Canada) to persons outside Canada who hold Canadian aviation documents, and to all Canadian aircraft and passengers and crew members thereon outside Canada (Subsection 4(1) of the Act). With regard to jurisdiction, the region in which a contravention occurs is the region responsible for the investigation.

(3) If a contravention occurs outside Canada, the investigation is the responsibility of the region in which the alleged offender resides or is based.

6.2 Types of Investigations

(1) Investigations are either administrative or penal. Most investigations conducted by Aviation Enforcement concern possible violations of designated provisions, and are therefore administrative in nature. Where there is a possibility of a penal outcome, the investigation is penal, and penal investigation tools are available and are to be incorporated in the investigation process. In a penal investigation, Charter warnings must be provided to persons who are suspected of having committed an offence and are under investigation.

(2) An investigation may be initiated on the premise that its outcome will result in administrative consequences. Where, however, during the course of an administrative investigation, it becomes apparent that there will be penal consequences to the investigation, it then becomes a penal investigation, and the appropriate tools are to be used.

6.2.1 Administrative Investigation – Procedure/Authority

(a) **Aeronautics Act 8.7(1):** This section gives the authority to the Minister to "enter, for the purposes of making inspections or audits relating to the enforcement of this Part, any aircraft, aerodrome or other aviation facility, any premises used for the design, manufacture, distribution, maintenance or installation of aeronautical products or any premises used by the Canadian Air Transport Security Authority", to

(i) "(a.1) remove any document or other thing from the place where the inspection or audit is being carried out for examination or, in the case of a document, copying,…to

(ii) (c) seize anything found in any place referred to in paragraph (a) or (b) that the Minister believes on reasonable grounds will afford evidence with respect to an offence under this Part or the causes or contributing factors pertaining to an investigation referred to in paragraph (b); and to

(iii) (d) detain any aircraft that the Minister believes on reasonable grounds is unsafe or is likely to be operated in an unsafe manner and take reasonable steps to ensure its continued detention.

(iv) This is the basic inspection authority given to delegated Civil Aviation inspectors and enforcement investigators who are conducting an administrative inspection or investigation.

(v) When documentation or evidence is seized under the authority of 8.7(1)(c), it is subject to the preservation and return of evidence or aircraft provisions of CAR 103.09.

Note:

In 8.7(1)(b), the reference to the Minister, entering a place for the purpose of investigations of matters concerning aviation safety, is a reference to the Minister of National Defense because of the interpretation given in Section 3(2) of the Aeronautics Act. It does not apply to the Minister of Transport or to Transport Canada inspectors or investigators.

(b) **CAR 103.02:** This regulation requires holders of Canadian Aviation Documents, owners and operators of aircraft, and holders of documentation or records relating to aircraft or a commercial air service to produce the document(s) or record(s) to the Minister upon demand. A person who refuses to produce such documentation upon demand may be charged with a violation of this CAR, which is a designated provision and subject to administrative action only. In an administrative investigation, a Charter warning is not required to be given to a person suspected of having committed an offence.

This CAR also applies to other documentation relating to an air service or an aircraft that we know the person or operator has, even if it is not documentation that is required to be kept. A full definition of "other documents" is found in CAR 103.02(4). In this situation, in proceeding with a charge under this section, we must have evidence that the documentation actually exists and that the person or operator has access to it.

As is always the case, the exercise of the authority granted by this CAR must be reasonable, and any notice period for compliance must be reasonable notice.

(c) **Aeronautics Act 8.8:** This provision requires that, after an inspector or investigator has entered a place to be inspected under the authority of 8.7(1), the owner or person in control of the place, as well as any persons in the place, shall give "all reasonable assistance to the Minister" as well as provide to the Minister any relevant information that the Minister may "reasonably" require.

Failure of any named person to provide reasonable assistance is a violation of 8.8 of the Act. Since this is a summary offence provision, when it appears that a person may be charged with a violation of this provision, the inspector should explain the provision to the person, and any further investigation or action in relation to s. 8.8 must respect a person's Charter rights. As well, at this time, investigators should contact their manager or the Chief of Enforcement.

6.2.2 Penal Investigation Tools

(1) The following tools are available for use during a penal investigation. Before their use, however, investigators may still request access to information, documents and facilities from operators and CAD holders. If the required information is given voluntarily, tools such as search warrants and production orders will not be required. They are available during penal investigations when required.

(a) Authorized Entry, Search Warrants and Production Orders.

During a penal investigation, the inspection powers of entry and seizure available under S.8.7 of the Act are no longer applicable. Where an enforcement investigator has reason to believe that an offence of a non-designated provision under Part I of the *Act* has been committed, and there are reasonable grounds to believe that evidence with respect to that offence is located in a particular building, receptacle or place, the following procedures apply.

(b) Authorized Entry and Search Warrants.

(i) In an investigation, consent must be obtained from the occupant for entry to any premises, including a dwelling-house, and for the acquisition of any evidence therein. If entry and the surrender of evidence are refused by the occupant, or there are grounds to believe that entry and surrender will be refused, then authorization for entry, search, and seizure must be obtained through a search warrant issued pursuant to the *Criminal Code.*

(ii) Subsection 8.7(2) of the *Act* states that sections 487 through 492 of the *Criminal Code* apply in respect of any offence committed or suspected to have been committed under Part I of the *Act*. These sections of the *Criminal Code* refer to authorizations for, and execution and disposition of things seized under, a search warrant used in an investigation.

(iii) Subsection 8.7(4) of *the Act* specifies that the Minister may not enter a dwelling-house without the consent of the occupant, unless a warrant has been issued under Subsection 8.7(5) of the *Act*. The warrant referred to here is for entry to a dwelling-house for the purpose of conducting an inspection. We refer to this as

an entry warrant, which should not be confused with the search warrant used in an investigation.

(iv) In all cases, before any warrant is issued, a judge or justice of the peace must be satisfied that entry to any premises is necessary and that entry has been refused or there are reasonable grounds for believing that entry will be refused. In the case of a search warrant, the judge or justice of the peace must also be satisfied that there are reasonable grounds to believe an offence has occurred and that evidence of the contravention is likely to be found on the premises. A judicial authority will authorize a search warrant only after an Information to Obtain a Search Warrant form is submitted (*see Appendix E for sample forms*).

(v) The validity of the evidence obtained during a search is dependent upon the accuracy of the details entered on the Information to Obtain a Search Warrant form and on the search warrant itself (*see Appendix E for sample forms*).

(vi) Search warrants stipulate the date and times during which the warrant may be executed and are normally issued for daylight hours only. Should night entry be anticipated, this must be specified when the request for the search warrant is made. Each building, vehicle or aircraft that will be subject to search must be identified on the search warrant. That information is privileged until the warrant is executed, at which time it becomes part of the public record.

(c) Executing a Search Warrant

A search warrant does not inherently authorize the use of force. It must be specified in the search warrant if the use of force is authorized. It is the Enforcement Division's policy that the Minister's representative be accompanied by a peace officer if entry with force is required on any occasion. The assistance of a peace officer is not required if the use of force is not necessary. That said, local Police **must always be notified** prior to the execution of any warrant to prevent interference with Police investigations.

In determining the level of police presence to accompany TC officers during the execution of a search warrant, consideration must be given to the degree to which police presence may be warranted. It should commensurate with results of the threat/risk assessment, take into account respective roles/responsibilities (e.g. seizures of evidence, uphold the peace/safety etc.) while avoiding excessive police presence.

Accordingly:

i. When planning the execution of a warrant, TC officers, in consultation with the Centre of Enforcement Expertise (CEE), must conduct a threat/risk assessment to determine if the location or individuals expected to be present during the search would present officer or public safety concerns which could require use of force or arrest, and any other considerations that may require the presence of local law enforcement at the search location;

ii. Where the results of the threat/risk assessment confirm the need to ensure public and/or TC personnel safety, TC officers must request assistance from local law enforcement in the form or police presence at the search location;

iii. Regardless of whether local law enforcement is engaged or present in the actual execution of a search warrant, TC officers must notify local police prior to execution of all warrants, to prevent interfering in any police investigations; and

iv. In any request for local law enforcement assistance, TC officers should discuss the matter of proportionate police presence to ensure that safety is maintained without the need to deploy an overwhelming number of police officers. TC officers should also discuss the respective roles and responsibilities of TC and

local law enforcement present at the search location (e.g. TC to search and seize, police to address obstruction and officer safety issues).

While the search warrant conveys considerable power to the holder, it must be remembered that the Unreasonable Search and Seizure Clause of the Charter of Rights and Freedoms could be an issue if a search goes beyond what was authorized in the search warrant. Items seized under a search warrant must be handled in accordance with the 12889891 provisions.

The following is to be considered when planning a search and executing a search warrant:

(i) Determine the number of people required to conduct the search. If more than one premises is to be searched, a decision must be made whether they will be searched simultaneously;

(ii) Thoroughly brief the team members before actually executing the search to ensure all personnel involved in the search understand the plan of action and their individual roles;

(iii) Clearly identify who will be the team leader during the search and who will act as spokesperson in all dealings with the occupant;

(iv) Inform all personnel of who will actually be doing the search where the occupants will be located and who will monitor the movements of the occupants;

(v) Appoint a note-taker to ensure complete and accurate notes are kept on the particulars of the search;

(vi) Appoint an individual to take possession of items seized and to maintain an itemized list;

(vii) Determine whether or not items seized will be removed, and if so, how and to what location;

(viii) Determine what the report to the judge or justice of the peace will contain and what items will accompany the report;

(ix) Execute the warrant in a calm, business-like manner; and

(x) Allow the individual whose property is being searched an opportunity to surrender, or at least to point out the location of, the items listed on the warrant after they are served with a copy of the warrant.

Note:

While items seized under the authority of a Search Warrant are retained and disposed of in accordance with the Criminal Code, items seized or detained under the inspection powers of the Act are retained and disposed of in accordance with Section 103.09 and section 103.10 of the CARs.

(d) Preservation Demands, Preservation Orders and Production Orders

Preservation demands, preservation orders and production orders are a type of warrant that can be used during a penal investigation to compel the person (other than an alleged offender) upon whom they are served to preserve computer data, produce a document that is a copy of a document in their possession or control, or to prepare and produce a document containing data that is in their possession or control at that time. In other words, Transport Canada does not conduct the search; the recipients, themselves, conduct the searches and produce the information required to the Minister. These orders are, for the most part, based on similar standards and safeguards as search warrants. Whereas a search warrant allows the Minister to search a certain place for evidence,

these orders compel a person to produce the relevant information, even if it is stored outside Canada, to the Minister within a specified time and at a specified place.

The production order provisions are contained in Part XV (Special Procedures and Powers—General Powers of Certain Officials) of Sections 487.011 to 487.0199 of the *Criminal Code*.

Section 487.0195(1) of the *Criminal Code* provides that no preservation demand, preservation order or production order is necessary for a Transport Canada inspector who is enforcing or administering the *Act*, to ask a person to voluntarily preserve data that the person is not prohibited by law from preserving, or to voluntary provide the inspector with the document or data that the person is not prohibited by law from disclosing.

There are many types of production orders within the *Criminal Code*:

(i) The general production order (referred to in Section 487.014 of the *Criminal Code*); and

(ii) Various specific types of production orders (referred to in Section 487.015 to 487.018 of the *Criminal Code*).

Before granting either type of preservation or production order, the justice of the peace or judge must be satisfied, on the basis of an *ex parte* application containing information in writing and on oath that there are reasonable grounds to believe that:

(i) An offence against the *Act* or the CARs has been or is suspected to have been committed;

(ii) The documents or data will afford evidence respecting the commission of the offence; and

(iii) The person that is subject to the order has possession or control of the documents or data.

Once satisfied, a judicial authority will authorize a preservation order or a production order in their respective forms.

Note:

Ex parte means a legal proceeding brought by one person in the absence of and without representation or notification of other parties.

(e) Particulars - Production Orders

Subsection 487.0192(1) of the *Criminal Code* provides that an order made under any of sections 487.014 and 487.016 to 487.018 of the *Criminal Code*, requires the document or data to be produced:

(i) Within the time specified;

(ii) At the place specified;

(iii) In the form specified; and

(iv) Given to the Peace Officer or Public Officer named in the order.

An order made under any of sections 487.013 to 487.018 of the *Criminal Code* may contain any terms and conditions that the justice of the peace or judge considers appropriate including, in the case of an order made under section 487.014, conditions to protect privileged communication between a person qualified to give legal advice and their client.

Sections 489.1 and 490.1 of the *Criminal Code* **do not apply** to a document that is produced under an order under any of sections 487.014 to 487.018.

(f) Revocations, Renewals and Variations of Preservation and Production Orders

Applications to revoke, renew or vary an order may be made by way of an *ex parte* application before the same justice of the peace or judge who made the order, or before a judge in the judicial district where the order was made.

Note:

Evidence that was obtained with the consent of the owner is to be retained and disposed of in the same manner as those seized under paragraph 8.7(1)(c) of the Act. Sections 103.09 and 103.10 of the CARs detail the procedure to be followed.

Section 487.0192(5) of the Criminal Code specifically states that copies of documents produced under 487.014 of the Criminal Code are admissible as though they were the original document, on proof by affidavit that they are true copies.

(g) Canadian Charter of Rights and Freedoms

It has been ruled in the courts that Subsection 10(b) of the Charter applies to individuals from whom a warned statement is being solicited in the course of a penal investigation. In view of this, immediately after being warned, alleged offenders should be advised of their right to retain and instruct counsel without delay. This action will add to the agreement of a statement. If at any time during a conversation or informal interview, an alleged offender makes a spontaneous statement that could lead to a penal investigation or charges, the investigator should interrupt the alleged offender and issue a warning.

This warning does not legally apply to corporations, but diligence would warrant the investigator to issue a warning whenever conducting an interview with an individual related to the corporation under penal investigation. In some cases, a comprehensive investigation could unveil evidence of contraventions, which may warrant penalties against this individual, or the corporation, or both.

A bilingual form, which contains the statement, can be found in Appendix E of this SI.

(h) Warning to Alleged Offender

The following is suggested wording for a warning to an alleged offender before a “warned statement” is taken or when an interview is conducted: *(See Appendix E of this SI for the Warning to Alleged Offender and Warned Statement Form)*.

“You are alleged to have contravened the *AA* and its regulations. It is my duty to inform you that:

(i) You are not obliged to say anything unless you wish to do so.

(ii) Anything you do say may be given as evidence against you.

(iii) You have the right to retain and instruct counsel without delay.

(iv) Do you understand?

(v) Do you wish to contact legal counsel?

(vi) Do you wish to give a statement?”

6.3 Comprehensive Investigations

(1) If the initial enforcement process indicates that a contravention took place and further evidence is necessary to establish the facts, a comprehensive investigation must be commenced. The purpose of the comprehensive investigation is to gather all the necessary evidence to prove or

disprove that an alleged offence occurred. The investigator's objective is not only to obtain sufficient evidence to prove an alleged offence occurred, but also to ensure that all the facts of the incident are disclosed so that natural justice will be served. The procedure for conducting a comprehensive investigation is as follows:

(a) Identify all provisions that were possibly contravened; (Designated Provision vs Non-Designated Provision)

(b) Determine if the investigation is administrative or penal;

(c) Analyze the regulations allegedly contravened (see Section 5 of this SI);

(d) Determine the evidence necessary to prove each element of a violation;

(e) Plan and initiate the steps necessary to obtain such evidence; e.g. interviews, resource personnel, expert witnesses, log books, records, search warrant, etc.;

(f) Obtain information from the alleged offender. The alleged offender must be contacted in person, by telephone or by mail and be advised that:

(i) an investigation is in progress; and

(ii) there is an opportunity for the document holder to offer voluntary information.

Note:

It is mandatory to advise the alleged offender that an investigation is in progress. The case file must be annotated to record the notification. An alleged offender may be able to provide evidence valuable to the investigation. Under no circumstances should the Notice of Assessment of Monetary Penalty or the Notice of Suspension be the alleged offender's first indication of an enforcement investigation.

In a penal investigation, a warning must be given advising the alleged offender that any information received from the alleged offender may be used as evidence. See Appendix E of this SI for the sample letter of investigation.

(g) Co-ordinate the investigation to prevent overlap or conflict with other TCCA personnel that may be concurrently conducting other inspection activities on the company or the person under investigation;

(h) Establish the cause of the violation, e.g. weather, navigation hazard, equipment, deliberate, inadvertent;

(i) Record the relevant information in EMS, including a narrative of the facts and circumstances surrounding the alleged violation;

(j) Record any action taken with all relevant information in the notes field of EMS;

(k) Prepare a personnel or company enforcement case file incorporating the results of the foregoing activities and including the detection notice (if any), a legible activity log and a case report; and

Note:

See Appendix A for more details on case reports.

(l) Consider RCMP assistance from the Crime Detection Laboratory and Identification section for writing sample comparisons, fingerprint evidence, paint analysis, restoration of serial numbers, authenticity of documents, chemical analysis of fuels and oils for water, blood alcohol analysis, verification of alcohol type, etc. This assistance is not automatically available to TCCA and may entail a fee.

6.4 Priorities for Investigation

(1) When a comprehensive investigation is to be conducted, the RME is to assign an investigation priority level as per the criteria found in Appendix E of this SI. It should be noted that priority must be given to investigations initiated at the request of the Minister. .

(2) In all cases, the RME's decision to assign a case for a comprehensive investigation should be made within 15 calendar days of receiving the detection notice, other notification or complaint.

(3) The comprehensive investigation should be completed and a recommendation made to the RME no later than 90 calendar days from the date the case was assigned.

(4) When an investigation cannot be completed within the 90 calendar days timeline, the investigator is to advise the RME as soon as possible, and is to document the reasons for the delay in EMS notes field.

(5) RMEs are to track and monitor all investigations that are still ongoing after 90 calendar days from the date they were assigned.

(6) The RME should adjudicate the case no later than 120 calendar days from the date the case was assigned for investigation.

(7) Should the adjudication take place more than 120 calendar days from the date the case was assigned, the manager is to document the reasons for the delay in the EMS notes field.

6.5 Conduct of Interviews with Witnesses and Alleged Offenders

(1) An interview is the questioning of a person who is believed to possess information relevant to the matter under investigation. Interviews include informal questioning of a potential witness in an attempt to determine what useful information the individual may possess about a suspected contravention, as well as the interview of an alleged offender. Questions may be asked of any person if it is deemed that useful information may be obtained. Normally, in an interview, the person questioned will be co-operative and furnish the desired information without hostility or evasiveness. Witnesses should be advised of the TCCA disclosure policy thus informing them of the level of confidentiality of information provided by them. *(See figure 6-1 of this SI for a comparison of interviews of witnesses and alleged offenders.)*

(2) Before conducting interviews of witnesses and alleged offenders it is useful to review an individual's rights, limitations on the investigator, the aim of the investigation and some of the factors which may affect the witnesses' perception of what actually took place during an event. The considerations outlined in the following sections apply to most interviews.

6.5.1 Objectives of Interviews

(1) The aim of an interview is to develop credible information relevant to the investigation and to record it for future reference. Specific objectives will vary with the nature of the case and the facts or circumstances which the inspector is attempting to ascertain. To prevent aimless questioning, the objectives of the interview must be formulated carefully and must be fully understood by the interviewer. Information obtained during the interview will be used as follows:

(a) to refresh a witness' memory before a TATC or court appearance;

(b) to freeze a witness' evidence so it cannot be changed before a TATC or court appearance;

(c) for review by Crown counsel when deciding what evidence should be presented at a trial; and

(d) to obtain evidence from an alleged offender in a manner acceptable by the courts that will aid in obtaining a conviction.

6.5.2 Interviewer's Assistant

(1) It is recommended that a third person, normally another inspector, be present at the interview. The assistant should record start and finish times of the interview, observe and note body language and physical appearance of the alleged offender, and record pertinent events such as interruptions. The assistant should also monitor the conduct of the interview and only take an active part in the interview when necessary.

6.5.3 General Considerations for Interviewing

(1) An investigation is a gathering of evidence to prove an alleged offence occurred. An investigator must utilize all the necessary investigative techniques available to reach this objective. The success of most investigations is largely dependent upon the proper use of effective techniques and procedures in interviewing complainants, witnesses and alleged offenders in order to elicit information.

(2) Investigators conducting interviews during the course of an investigation must be cognizant of the personal rights of the individuals being interviewed. All persons being interviewed must be treated with courtesy and respect. At no time should the individual being interviewed feel threatened or be subjected to verbal abuse or humiliation. Should an alleged offender choose to seek the advice of legal counsel or be accompanied by counsel to the interview, investigators must respect the lawyer/client right to privacy and confidentiality. Investigators must also be aware that there are no provisions within the *Act* to prevent a witness or an alleged offender from ending an interview at any time.

(3) The best technique is to systematically persuade the witness or the alleged offender in a non-confrontational and friendly atmosphere to provide accurate, complete and detailed information regarding the offence. In this manner the interviewer will lessen the interviewee's inhibitions, stimulate the natural inclination to co-operate and encourage a conclusion that being truthful will only benefit the individual in the end.

(4) To properly conduct the interview an investigator must have a detailed knowledge of all available facts in order to separate truth from falsehood. A fair knowledge of human nature enables the investigator to judge character and understand motivations. The investigator must think clearly and exercise good judgment, patience and self-control. It should be remembered that what witnesses say they saw may not always be what happened due to their own interpretation of events. It has been proven that the most unreliable forms of evidence are those given by eye-witness identification and description (5) This weakness has long been recognized by the courts and was generally described in the following manner:

    (a) Recognition or identification is one of the least reliable facts testified to even by actual witnesses who have seen the parties in question due to the carelessness or superficiality of observers, the variety of powers of graphic description, and the different force with which peculiarities of form or color or expression strike different persons.

(5) Individuals may be co-operative witnesses, and vividly describe in detail what they saw. However, before accepting this information, determine if the witnesses actually were in a position to see or hear what they are describing. Check the angle of view, look for any obstruction to the line of sight and determine if the conversation or sounds reported by the witnesses could in fact be detected from their position. These precautions are necessary because people tend to augment their observations with what they believe occurred when there are gaps in those observations.

(6) Optical illusions can also lead to misjudgment. A witness will tend to over-estimate height and underestimate breadth and width. To most people, a red object appears larger and nearer than a blue one of equal size.

(7) Interest is a strong factor influencing the manner in which people observe and interpret their surroundings. Generally, women will be more perceptive of colors, clothing, details and the

presence of people. Men generally more accurately describe distances, physical descriptions, speed, weapons and mechanical aspects.

(8) Investigators must be aware of the power of suggestion when gathering information from witnesses, as there is a tendency for people to conform to the opinion held by the majority. Therefore, ensure that witnesses are separated before interviewing or taking statements from them. This eliminates the possibility of one witness overhearing the statement of another witness. During an interview do not repeat statements made by other witnesses.

(9) A witness should be interviewed at the earliest possible time because people have a tendency to forget, some more rapidly than others. Furthermore, there is a danger that the witnesses will acquire additional information which in turn will displace or bias the original information in their mind.

(10) If there appears to be a language problem, an interpreter should be summoned. The lucidity of the alleged offender or witness should also be assessed to ensure the alleged offender or witness is not under the influence of alcohol, drugs or a medication during an interview.

(11) In seeking the truth, an investigator must constantly inquire, "*WHO did WHAT, WHEN, WHERE, WHY and HOW?*" until all the essential facts of the case are assembled.

(12) Since questions are the tools of the interviewer, it is essential that they are clear, concise, communicative, and designed to elicit information. The interviewer should use language that is easily understood by the person being questioned. An investigator should not use technical aviation terminology when interviewing an individual who does not have an aviation background.

6.5.4 Tape Recordings of Interviews and Conversations

(1) Tape recordings of witness statements made during personal interviews or telephone communications may be used to refresh the memory of a witness at a hearing before the TATC or prior to trial in court. They may also be used to prove prior inconsistent statements of a hostile witness or as evidence of a document holder's admissions or confessions. Consent to tape the interview should be obtained from the interviewee.

(2) If a taped statement is to be used at the TATC or in court, a written transcript must be prepared as soon as possible after the recording is made to provide both legible and audible formats for the testimony. The transcript must be introduced in a court or a TATC hearing by the person who made the recording in order to identify the voices on the tape and reinforce the purpose of the tape recording.

(3) Tape recordings constitute a "record" as defined in TP 111 and as such must be handled, secured, stored and disposed of in accordance with those publications. Information from taped conversations must be retained for the same length of time as stipulated in TP 111 for other records. If a hard copy transcript of a recording is created, the recording can be destroyed after a valid affidavit has been obtained as proof of authenticity of the transcript.

6.5.5 Tape Recordings of Telephone Communications

(1) Tape recordings of telephone communications of a witness or an alleged offender are often useful for internal administrative purposes. Specifically, a tape recording provides unbiased information and accurate occurrence details for case reviews.

(2) Occasionally, when a personal interview cannot be arranged, there may be a requirement to record the telephone communication of a witness or document holder for use as evidence. The following procedure must be used when such recording is to be made.

(3) An investigator who originates or receives a telephone communication may record the conversation of a witness or a document holder if such person has been advised of the investigator's intention to record and agrees to such recording being made. In all cases the

investigator should inform the witness or document holder of the reason for recording the conversation. (e.g., so that the exact conversation may be transcribed). In a penal investigation, where the conversation is with an alleged offender, the investigator must record the standard warning and the acknowledgement of understanding by the alleged offender prior to proceeding with a statement or questions.

6.5.6 Techniques in the Conduct of Interviews

(1) The investigator conducting the interview should attempt to put the witness or alleged offender, as the case may be, at ease by first making introductions and then obtaining some basic information such as a name, address, and telephone number, etc.

(2) If the alleged offender in a penal investigation is to be interviewed, then a formal warning should be made before that individual begins relating information. The warning may vary depending on the investigation and whether or not the alleged offender has been subjected to prior questioning. The warning should be written, then read and clearly understood by the alleged offender. Should the alleged offender refuse further comment on the allegations after the formal warning then no further questions should be asked.

(3) Tape record the interview whenever possible and make the witness aware that the interview will be recorded. If a written statement is required, refer to Appendix E of this SI for a sample "Statement" form – witness or "statement after warning" form.

(4) The following is a guideline to obtaining the required information from an interview:

- (a) Have the witnesses describe everything they saw and heard relative to the time, place, person and event in question;
- (b) Listen and make brief notes as a memory jogger;
- (c) Ask questions to explore specific aspects of the story. Questions should not be in the nature of a cross-examination;
- (d) Establish the foundation for the statement by the witness, such as:
  - (i) How the witness happened to be in that particular place when the observations were made; and
  - (ii) What was the exact physical position of the witness in relation to the location of the contravention?
- (e) Present exhibits to the witness for identification and marking; and
- (f) Ask the witnesses to state any relationship which may exist between themselves and any other person concerned with the contravention or its circumstances.

(5) Just prior to concluding the main portion of the interview, the interviewer should attempt to resolve any minor conflicts which may appear between the witness' story and the known circumstances of the contravention. To avoid the problem of being suggestive, this should be done in general terms without mention of specifics (e.g. "What color did you say the plane was?" is preferable to "You said the plane was yellow; can you be sure of that?").

(6) The last stage of the interview encompasses the completion of a written statement, if required, for signature by the witness. Additionally, a diagram of the interview room is always appropriate. If the notes of the interviewer's assistant are adopted, they must be properly marked and identified.

6.5.7 The Written Statement

(1) The purpose of the statement is to provide a written record of the witness' account of the events. From the statement, the investigator can evaluate the case and the prosecutor will be able to monitor the testimony of the witness in court. Using the statement the prosecutor can hold a

witness to the facts as declared and avoid any surprise testimony which might adversely affect the case *(See Appendix E of this SI sample Letter, Notices and Forms).*

(a) Statement Preparation

In preparing a written statement from a witness or an alleged offender, the following procedures should be adopted:

(i) Use plain foolscap paper for recording a statement;

(ii) Record the time, place and date on the top of the first page of the foolscap;

(iii) Record the witness' full name, date of birth, address and telephone number at the beginning of the statement, e.g. *"This is the statement of _____"*, and add the details;

(iv) If a warned statement is to be taken from an alleged offender, (during a penal investigation) write the warning next. Have the alleged offender read the warning and ensure that it is clearly understood by the individual. The alleged offender should then initial the warning thus signifying their understanding of it. The warning should be recorded in writing so that the exact wording can be confirmed if required *(See Appendix E of this SI for the suggested wording of the warning)*;

(v) The narrative of the statement is next. The witness should relate events in chronological order. Encourage the witness to relax, take time to recollect, and be specific with the facts. Assist the witness by asking for clarification on specific issues if necessary;

(vi) When the narrative is finished, ask questions to expand and clarify it. Write the question first, then read it to the witness. Record the answer verbatim;

(vii) When the statement is finished have the witness read the statement back aloud. This will confirm the witness' ability to read and therefore understand the contents of the statement;

(viii) Make any corrections the witness requires and have them initialed by the witness. Do not correct spelling or grammar in a statement without the witness' consent and initials;

(ix) Have the witness sign the last page of the statement. If the statement is that of the alleged offender and the individual is reluctant to sign it, no pressure should be placed on the individual to do so; and

(x) The interviewer witnesses the statement by signing the last page and recording the date and time.

Figure 6-1 - Comparison of Interviews of Witnesses and Alleged Offenders

Witness	Alleged Offender
AIM …to gather information and test its validity in order to determine the particulars of the matter under investigation.	…to gather information and test its validity in order to determine whether the subject was responsible for or involved in the matter under investigation.
WHO …witnesses who are willing to provide the investigator with any information they possess about the matter under investigation.	…persons suspected of offences as well as others who may have information but are reluctant to offer it.

WHEN …interviews should take place as soon as possible after the event as occurred so that statements by witnesses are not affected by memory loss, influence of talking to others, etc. Immediate gathering of information enables the investigator to prepare for interviewing alleged offenders.	…interviews of alleged offenders should take place ideally after the investigator has gathered enough information to make a judgment on how truthful the subject is. An alleged offender interview is more fruitful after witnesses have been interviewed and physical evidence has been located and evaluated.
LOCATION …at a place convenient and familiar to the subject or in a neutral setting. The subject's home, place of business or any place where privacy is assured is preferred.	…the interview room at the office is best since it enables the inspector to manage the security of the subject and to control other factors which might tend to be distracting.
TECHNIQUE … a low-pressure, informal atmosphere is preferred to allow the subject to relate his information in narrative style. Specific questions should be used to gather more detail and to jog the witness's memory.	…basically the same method as with witness interviews, but the atmosphere is more formal and the investigator works toward a more specific purpose.

6.6 Coordination

(1) Coordination and communication is necessary to maintain technical accuracy and perspective and to expedite the collection of all relevant facts. This coordination can be with a variety of agencies as follows:

(a) TCCA Functional Branches: If the subject matter of a violation is within the area of expertise of another aviation functional branch and technical information is required, that branch should be contacted during the investigation. This ensures that the investigation and all subsequent action will be based on relevant facts, accurate information and existing policies. (Refer to Section 5 of this SI.)

(b) RCMP: Investigators should seek RCMP assistance if circumstances prevent TCCA from investigating or if RCMP expertise or authority is required. If the RCMP detect or investigate potential violations, the RME should expect to be consulted in accordance with the TCCA/RCMP Memorandum of Understanding.

(c) Provincial and Municipal Police: Investigators should seek the assistance of the provincial or municipal police when it is impractical for TCCA or the RCMP to investigate. Investigators must provide direction to these police officers. Whenever possible, the assistance of an officer with aviation expertise should be sought.

(d) Detection source: The detection source is to be contacted when a case is opened in order to advise the detection source of the progress in addressing the initial complaint, to confirm the facts of the complaint, and to seek whatever further information the detection source might be able to provide to assist in the investigation. The detection source must also be advised of the outcome of the case when the case is closed.

(i) All detection sources are to be contacted in writing (email, internal memo or letter) and the fact of contacting the detection source should be recorded in the notes field of EMS. *(See Appendix E of this SI for a sample letter)*. When the

detection source is internal, the manager is to be copied on all written correspondence.

(ii) When the detection source is internal (TCCA), he or she is to be updated at minimum at the following stages of the investigation:

(A) Upon receiving the detection notice;

(B) When the investigation is initiated;

(C) Regular updates during the investigation; and

(D) When the adjudication is made.

6.6.1 Air Traffic Service Documents and Information

(1) ATS documents and information may be used as evidence in any proceedings but are not to be used to detect contraventions. The Procedural Protocol with NAV CANADA defines documents and information as follows:

(2) “Documents” are printed or printable matter as opposed to tapes or electronic files. They include, but are not restricted to, unit logs, flight plans, or flight progress strips. They are also “Aircraft Movement Statistics Micro Data” that can also be obtained from Statistics Canada when authorized by NAV CANADA to release that Data to TC when NAV CANADA does not possess the requested Data.

(3) “Information” is tapes or electronic files which record sound or the movement of aircraft and vehicles. It includes, but is not restricted to, radar tapes and files, audio tapes and files, Radex, Winrad, digital files, and information stored on any similar medium not mentioned here. The term “tapes or files” include any of the forms of information listed in this paragraph.

(4) ATS has the equipment and personnel to secure and copy tapes electronically while conforming to our requirement for continuous possession and quality of evidence. Special procedures are required to ensure that requests for ATS recordings are properly channeled and that continuity of possession is maintained. Enforcement staff may have to participate in the making of a copy of a tape. If required, NAV CANADA is to provide the access to unit equipment to allow copying of a tape or file. NAV CANADA has directed their personnel to provide this information and, if difficulty is encountered, it is suggested that resolution be sought with the REDANS who will have received a copy of the request for information.

(5) Primary Communication: This procedure applies to tape recordings of communication directed to or from a NAV CANADA facility. If it is suspected an ATS tape may be required as evidence, the unit manager or the manager’s representative should be contacted, verbally or in writing, to secure the tape as soon as possible after an incident. The request should be made within a 30 days period of any incident and the reason for saving the tape or file should be provided. If the request is made verbally, it must be followed up by a written confirmation within 30 days of the incident. The tape will be retained for 2 years When it is determined that the tape will definitely be required as evidence in a case, a written request for the original tape or a copy thereof will be made to the unit manager or the manager’s representative within NAV CANADA. A copy of the request is to be sent to the NAV CANADA Regional Executive Director, ANS (REDANS). The request must indicate the reason for which the information is required, explaining that an investigation is being conducted following the report of a violation at a given place and time. The written request must contain facts sufficient to identify the circumstances surrounding an alleged violation for which the information recorded on the tape is sought. The request should specify the date, time, radio frequency and facility involved. It is important to clearly indicate whether the original or a copy is required. *(See Appendix E of this SI for a sample request letter.)*

(6) Third Party Information: NAV CANADA’s position is that third party information consists of all radio transmissions that do not originate from or are not directed to NAV CANADA facilities, such

as an exchange of transmissions between two aircraft on a Mandatory Frequency which is tape recorded. A Production Order – Transmission Data under 487.016(1) of the *Criminal Code of Canada* may be obtained in order to acquire tapes containing only third party information, since it may be illegal for NAV CANADA to release that information without an order.

(7) Securing Tapes: ATS personnel will secure the requested communications in accordance with NAV CANADA Air Traffic Services Administration and Management Manual (ATSAMM) 266. The original or a primary copy will be provided. Although additional copies may be requested, only the original or the primary copy should be tendered as evidence.

(8) Where the original ATS tapes are required, they may be released into the custody of an investigator, an RCMP officer or a representative of the Attorney General of Canada. This person is responsible for the security and preservation of the tapes in their original condition until returned to the ATS unit or until delivered to another responsible person.

(9) The NAV CANADA / TCCA Procedural Protocol stipulates that tapes must be retained for 2 years or until advised by TC that it is no longer required for evidence, whichever comes first. If information is required to be secured for more than 2 years, TC must provide NAV CANADA with a written justification for the continued securing of the information. All such request must therefore be made within the 2 year period.

(a) Tapes, which have been secured and subsequently held for an investigation, must not be released by Enforcement until all possible proceedings have been completed. However, because of scarcity and cost, every effort should be made to release the tapes when they are no longer required.

(b) Where the ATS tapes are to be produced in court or before the TATC, the following must be proved:

(i) Continuity of Possession: It must be proved that the tapes were at all times in the possession of a responsible individual and could not have been subjected to tampering. *(See Appendix E of this SI for a sample form to show continuous possession)*;

(ii) Technical Basis: The circumstances in which a witness who was present during the copying process must explain the copy entered as evidence before the court or the TATC was made. That individual should be able to explain the way ATS recordings are made and refute the possibility of inaccuracies by testifying that new or clean tapes were used, that all equipment was working properly and that, after copying, the tape was compared with the original or a transcript of the original and found to be accurate; and

(iii) Voice Identification: All voices on the ATS tapes must be identified by knowledgeable witnesses. Air Traffic Controllers can only testify to having received the communication and not to the identity of the originator of that communication unless they are personally familiar with the voice of the speaker. Witnesses in the cockpit are likely the only persons capable of adequately identifying the person whose voice is recorded on the tape.

(10) If regional efforts to obtain tapes are stymied, refer the matter to Enforcement Headquarters for resolution with NAV CANADA.

6.6.2 Disclosure of Taped Information

(1) Upon request an investigator is to provide copies of an ATS tape or a transcript of the tape to an alleged offender or to the legal counsel representing the alleged offender. Except where required by law or a tribunal, copies of the tape or transcripts are not to be disclosed for civil proceedings.

6.6.3 Air Traffic Services Progress Strips

(1) ATS progress strips should be obtained either in their original form, as copies certified true by the controller concerned, or as transcripts accompanied by an affidavit certifying the accuracy and authorship of all recorded information.

6.6.4 Request for Secretary's Certificates and Other Documents

(1) The following guidelines apply to such requests:

(a) Investigators are responsible for the requisition of any document required by a Case Presenting Officer (CPO), the RCMP or the DOJ to support the enforcement case;

(b) Investigators must forward requests for these documents to the Departmental General Counsel – Transport Canada (AJ) in Ottawa. The requests should be accompanied by the appropriate regional files. To ensure accuracy and for ease of reference the aviation document that is to be certified should be flagged;

(c) Requests for Secretary's Certificates or certified true copies should include the following information:

(i) The Canadian Aviation Document which requires certification. Ensure accuracy in the spelling of individual and company names;

(ii) The official language in which the certificate should be prepared;

(iii) What the certificate should state. Ensure the comments part of the request provides a clear, concise statement regarding what the certificate must establish. The contraventions may also be stated; and

(iv) The date the certificate is required by the investigator.

(d) AJ will send the Secretary's Certificate to the applicable regional office for final disposition.

(i) A request for a Secretary's Certificate should normally reach AJ at least 10 working days in advance of the date it is required. If the certificate is required in less than 10 days, contact the CE *(See Appendix E of this SI for a sample request form.*

6.7 No Investigation Conducted / No Further Action

6.7.1 No Investigation Conducted

(1) Sometimes, it is evident from the original complaint or the Detection Notice that the case does not warrant a comprehensive investigation because of: lack of evidence; referral to a foreign or Canadian agency; limitation on action period; low safety item; insufficient resources; etc.

(2) Nevertheless, the relevant information must be recorded in EMS. In some cases a hard copy file must be opened to retain information if required under the *Access to Information Act.*

(3) In cases where a comprehensive investigation is not warranted, the RME is to close the file as No Investigation Conducted (NIC). This decision is to take place within 15 calendar days of receiving the original complaint.

6.7.2 Case Closure – No Further Action

(1) A case should terminate with No Further Action (NFA) once the investigation is complete if:

(a) The alleged offender's identity cannot be ascertained;

(b) The evidence does not provide reasonable grounds to believe the violation took place;

(c) An incorrect technical or other flaw in the case precludes further action;

(d) An exemption had been granted which negated the contraventions; or

(e) A defense of necessity, due diligence or officially induced error is established.

(2) Enforcement correspondence relating to a case in which no further action was taken is recorded but the case is not to be considered a contravention. *(See Appendix E of this SI for NFA – Sample Letters.)*

Note:

Although EMS will automatically flag a Personnel Licensing file when Enforcement suspends a license, there are other occasions when Enforcement has an interest in an individual and a flag on the document holders licensing file that would draw the appropriate attention. To have a licensing file flagged, send notification to Personnel Licensing and ask that the file for the individual, identified by name and Canadian Aviation Document number, be annotated, "If Mr. (Canadian Aviation Document holder name) makes contact with TCCA, please advise the Enforcement division."- EMS does not automatically flag a CAD holder in A.M.E.S.

6.7.3 Defenses – Necessity, Due Diligence, Officially Induced Error

(1) If early in an investigation facts are uncovered, which point to the likelihood that an alleged offender could successfully argue the actions taken were justified, the investigator may opt to terminate the investigation with a recommendation for no further action. In certain cases where wrongful conduct can be proven or is admitted, the alleged offender may still be able to raise a defence based on necessity, due diligence or officially induced error. These defences are available in both judicial and administrative proceedings.

(a) The Defense of Necessity

The defense of necessity has its origins in common law and remains available to alleged offenders. In deciding whether the defense has been established, the RME should carefully examine the facts to determine whether all of the following conditions apply:

(i) The situation was so urgent and the dangers from inaction were so imminent that it was unreasonable to delay any action;

(ii) Compliance with the law was demonstrably impossible as the violation was inevitable or unavoidable in that there was no opportunity for an alternative course of action that did not involve a contravention of the regulations; and

(iii) The hazards to flight safety caused by the contravention were less serious than the hazard posed by complying with the law (e.g. breaking the law is less serious than any accident that might result from complying with it in the particular circumstances).

In addition, the RME must be satisfied on reasonable grounds that the urgent situation was not brought about by the alleged offender through negligence or a breach of the regulations. In other words, where the alleged offender created the danger, the alleged offender cannot avoid liability for a contravention committed to escape from that danger.

Where the defense of necessity is proven, the alleged offender cannot be found to have contravened the law because the contravention was necessary to avoid an immediate greater danger (in particular, death or injury).

(b) The Defense of Due Diligence

Section 8.5 of the Act provides for the “defense of due diligence” in an alleged contravention of the CARs or the Act. In order to establish this defense, the alleged offender must show that due diligence was exercised (all reasonable steps were taken) to avoid committing the contravention. Where due diligence is proven, the alleged offender cannot be found in contravention of the law because all reasonable steps to avoid the contravention were taken. What constitutes due diligence will therefore vary from case to case depending on the facts.

(c) Officially Induced Error

The defense of officially induced error is available where an alleged offender has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. It must be proved, on a balance of probabilities, that the alleged offender relied on the erroneous legal opinion or advice of the official and that this reliance was reasonable. The reasonableness will depend on several factors, including the efforts made by the alleged offender to ascertain the proper law, the complexity or obscurity of the law, the position of the official and the clarity, definitiveness and reasonableness of the advice given. The defense may at times overlap with the defense of due diligence, but it is separate and distinct.

(d) Application of Defenses

Any one of the previously mentioned defenses can be raised by the alleged offender during the investigation or at any time before a decision to impose a sanction has been made. If the RME is satisfied that a defense has been established and therefore an offence has been committed but was justified, then the case must be closed as abandoned. When a defense of due diligence or necessity has not been proven, a mitigating circumstance may still exist that may be taken into consideration by the RME. If an informal meeting is requested by the document holder, the procedures as laid out in Section 10.9 of this SI are to be followed. If the alleged offender insists the defenses are valid, the situation becomes a matter for the TATC or the court to decide.

6.8 Preservation of Evidence

(1) CAR 103.09 – When the inspection authority of paragraph 8.7(1)(c) is used to seize evidence, the evidence must be treated as per the requirements of CAR 103.09. This CAR describes the requirements with respect to the preservation and return of evidence or aircraft.

(2) CAR 103.09: Where the Minister seizes anything pursuant to paragraph 8.7(1)(c) of the Act, the Minister shall

(a) mark it in a clearly identifiable manner;

(b) take reasonable care to preserve it until it is required to be produced as evidence; and

(c) return it to the person from whom it was seized within 90 days after the seizure, where

(i) there is no dispute as to who is lawfully entitled to possession of the thing seized,

(ii) the return is not likely to affect aviation safety, and

(iii) the continued detention of the thing seized is not required for the purposes of an investigation, hearing or other similar proceeding.

6.9 Miscellaneous Procedures

6.9.1 Unruly Passenger Incidents

(1) When informed of an unruly passenger incident that has been handled by a police agency, an Enforcement officer should open an EMS preliminary review file for the incident and close the case with No Further Action (NFA), if applicable. This procedure will facilitate tracking of the incidents and will meet statistical requirements.

6.9.2 Youth Criminal Justice Act

(1) When a person under the age of eighteen contravenes the *Act* or regulations, compliance action must be taken through section 5 of the *Youth Criminal Justice Act*. This procedure applies to both designated and non-designated provisions. Investigators should liaise with their local Public Prosecution Service of Canada (PPSC) regarding procedures to be followed.

6.9.3 Cockpit Voice Recorder / Flight Data Recorder

(1) Cockpit Voice Recorder (CVR)/ Flight Data Recorder (FDR) recordings must not be used by TCCA in any enforcement matters. Their use is limited to aircraft accident investigations to assist in determining the cause of accidents and incidents. Should courts of law subpoena CVR/FDR tapes, counsel for the Department will handle the matter.

6.9.4 Medical and Optometric Information

(1) Information provided pursuant to Subsection 6.5(1) of the *Act* (medical hazards to aviation safety) is privileged and no person must be required to disclose it or give evidence relating to it in any legal, disciplinary or other proceedings and the information so provided is not to be used in any such proceedings (Subsection 6.5(5) of the *Act*).

(2) If the Minister requires medical records on a Canadian Aviation Document holder to substantiate a case before the TATC or in court, the custodian of the records or the physician in question must be subpoenaed. A subpoena is not required where the document holder voluntarily provides the records or gives the custodian or physician permission to release the records.

(3) When these methods are not likely to produce results, a search warrant may be used by the RME pursuant to a charge under Subsection 602.02(b) of the CARs.

(4) Whenever a search warrant is required to obtain medical records, the RME must inform the Chief, Enforcement (CE) and the Regional Director Civil Aviation (RDCA) who will notify the Director General, Civil Aviation (DGCA) with a briefing note well in advance of obtaining the search warrant.

(5) If there are reasonable grounds to believe that a physician is withholding information regarding a medical condition that is likely to constitute a hazard to aviation safety, the Regional Aviation Medical Officer (RAMO) will inform the Director, Civil Aviation Medicine (DCAM) who will initiate whatever action is considered appropriate.

6.9.5 Designated Airspace Handbook Excerpts

(1) The *Designated Airspace Handbook* (DAH), published by NAV CANADA, is available electronically on the Internet at: http://www.navcanada.ca/EN/products-and-services/Pages/aeronautical-information-products-designated-airspace-handbook.aspx

Note:

Back issues of the DAH available on the NAV CANADA website may not meet all Enforcement requirements for data. NAV CANADA will e-mail or print out those pages that

are required by Enforcement, on request, provided the number of demands per year is not excessive. The regions should send requests for archived information to Enforcement Headquarters, which will obtain the information from NAV CANADA and forward it to the region. Enforcement Headquarters will track the number of requests to determine whether an alternate means of obtaining archived DAH information should be considered based on frequency of requests and ability of NAV CANADA to provide the information at that frequency.

6.9.6 Quality Control (QC) of Investigations

(1) The RME is to ensure that all investigations are completed following the procedures set out in this SI and that all fields of EMS are completed appropriately.

(2) A quality control (QC) of each investigation is to be conducted by the RME or his delegate, using the established criteria and checklist found in Appendix E of this SI. The results of the QC are to be documented in the notes field of EMS and the completed checklist is to be placed in the paper file.

(3) At the end of each midyear, HQ Enforcement will produce from each region, a list of closed preliminary reviews and closed cases where the detection source was internal to TC. HQ will sample from that list, files to be used in the HQ quality assurance process.

7.0 SPECIAL INVESTIGATIVE PROCEDURES

7.1 General

(1) This section contains information that applies to specific types of persons or enterprises when under investigation for having committed a contravention. Enforcement personnel must, along with using investigative procedures specified in Section 6 of this SI, give due consideration to the following sections, as applicable to the type of offender being investigated.

7.2 Contraventions by Military Aircraft

(1) The CARs do not apply to:

(a) Canadian Armed Forces aircraft operating under the authority of the Minister of National Defense; and

(b) Foreign military aircraft that have been exempted by an Order in Council (New Zealand, United Kingdom and United States of America) or have been granted similar status on a temporary basis through diplomatic clearance (Australia, Belgium, Italy, Federal Republic of Germany, Greece, Netherlands, Norway, NATO (North Atlantic Treaty Organization) Airborne Early Warning Forces, Saudi Arabia and Singapore).

(2) For any incident involving any foreign military aircraft operating in Canadian Domestic Airspace, or for any incident involving Canadian military aircraft, the RME is to forward a detection report to:

1 Canadian Air Division Headquarters

Box 17000, Station Forces

Winnipeg, Manitoba

R3J 3Y5

Attention: A3 Combat Readiness / DICP

Telephone: 204-833-2500 Ext 6410

(3) Contraventions by foreign military aircraft which are not exempted from the CARs and that are in domestic airspace, or a contravention by any foreign military aircraft that is operating in Canadian controlled oceanic airspace are to be investigated following the same procedure used for foreign registered civil aircraft. A notice informing A3 Combat Readiness of the contravention is required only if the military aircraft was operating in Canadian Domestic Airspace. The initial enforcement process report must be sent to the CE for consideration for further investigation.

(4) Working-level communications between TCCA and 1 Canadian Air Division Headquarters may be conducted between the CE and A3 Combat Readiness, 1 Canadian Air Division Headquarters, Winnipeg.

(5) A Memorandum of Understanding (MOU) between the Department of National Defence and Transport Canada Civil Aviation sets out the responsibilities for the exercise of technical and operational oversight of foreign and domestic civilian air operators conducting military missions with civil registered aircraft for DND, and for civil registered aircraft operated by the DND/CF in Canada including domestic civilian air operators conducting military missions for DND with civil registered aircraft outside Canada.

7.3 Contraventions by NAV CANADA

(1) In the event a contravention is reported to have been committed by an air traffic controller or other NAV CANADA personnel or by NAV CANADA, the event will be reviewed by the National Operations Branch personnel responsible for oversight of NAV CANADA. Following the process identified staff instruction SUR-006 — Civil Aviation Non-compliance Event Review National Operations Branch staff will review the non-compliance event. Only when directed to do so by National Operations, is Enforcement to investigate the contravention. Enforcement Standards in Headquarters is responsible for conducting any investigation of a contravention committed by NAV CANADA or their staff.

(2) Where the enterprise manager for NAV CANADA has requested Enforcement to begin an investigation of a contravention committed by NAV CANADA, or their personnel, the investigation process must respect the procedures specified in the TCCA / NAV CANADA Procedures Protocol.

7.4 Contraventions of Foreign Aeronautics Legislation by Canadian Aviation Document Holders

(1) These procedures apply whenever a Canadian Aviation Document holder is alleged to have violated foreign aeronautics legislation. The procedures are mainly intended to address contraventions by Canadians or Canadian based enterprises that are operating in foreign countries.

(2) When detection information is received that relates to a contravention of foreign aeronautics legislation by a Canadian or Canadian enterprise, an EMS preliminary review file will be opened. If there is an equivalent piece of Canadian legislation, the case is to be considered for further investigation depending on such factors as would apply to a similar investigation had the contravention taken place in Canada. Due consideration must be given as to whether the offender is subject to the Civil Aviation SMS Enforcement Policy.

(3) Notwithstanding the outcome of any investigation, no person will be proceeded against by way of administrative or judicial action if they are being, or have already been, proceeded against by a foreign state in respect of that contravention.

(4) The investigation is to be conducted by the region where the document holder resides or where the air operator maintains its main base.

7.5 Contraventions Involving Foreign Civil Aircraft

(1) While in Canada, pilots and operators from foreign countries are required to comply with Canadian legislation. Where a contravention occurs to the *Act* or the CARs, the appropriate regional Enforcement office is to conduct the investigation. Timely inter-division consultation is mandatory to ensure expedient and effective enforcement actions.

(2) Most foreign aircraft activity in Canada involves foreign commercial operators who are required to hold a Canadian Foreign Air Operator Certificate (CFAOC) issued pursuant to Section 701.02 of the CARs. During an inspection or initial investigation of an alleged offence involving any foreign commercial operator, the operator should be able to produce a CFAOC or a Flight Authorization issued pursuant to Section 701.03 of the CARs. If the operator cannot produce one of these documents, the TCCA inspector should attempt to verify the existence of a CFAOC through reference to National Aviation Company Information System (NACIS) or verify issuance of a Flight Authorization with the Foreign Inspection Division (FID). The operator's presence in Canada may be in contravention of Sections 701.02 or 701.03 of the CARs. When the country of registration of an aircraft is different than the country that issued the operating certificate for the operation of that aircraft, the country that issued the operating certificate should be the country that is contacted during the conduct of an investigation. That same country should be the country to which the case is referred when a referral is appropriate.

(3) The FID monitors the activity to and from Canada of foreign commercial air transport service operations which are certificated to operate in accordance with a CFAOC. In addition, FID monitors Specialty Air Service (SAS) operations conducted in Canada pursuant to the Free Trade Agreement (FTA) and certificated by TCCA under a CFAOC – FTA. Thus FID can often provide information useful to an investigation. While Enforcement has the ministerial authority to impose a monetary penalty or to suspend an AOC as a punitive measure under Section 6.9 of the *Act*, FID can concurrently suspend or cancel a CFAOC under Section 7.1 of the *Act* for other than punitive reasons. Where foreign commercial air operators are involved in an alleged contravention the RME must advise the FID.

(4) It should be noted that an operator may be from an ICAO member state which has filed differences with ICAO that does not meet the requirements of Canadian legislation. Notwithstanding the filed differences, the foreign operator is still required to comply fully with Canadian legislation. The following sections describe additional considerations for enforcement activity when dealing with various foreign civil aircraft and operators. When the procedure directs that Headquarters Enforcement and/or the FID be informed, sending a copy of the Letter of Investigation, notification by facsimile, e-mail, or a telephone call is sufficient.

7.6 Civil Aviation Safety Management Systems Enforcement Policy and Canadian/Foreign Air Operating Certificate Holders

(1) CFAOC holders are not required under the CARs to have an SMS, therefore contraventions committed by CFAOC holders are not typically subjected to the Civil Aviation SMS Enforcement Policy. Notwithstanding the foregoing, some CFAOC holders may have a system or program similar to an SMS that incorporates the SMS elements necessary (specified in Appendix C to Civil Aviation Directive (CAD) 107-004) to be subject to the policy in CAD 107-004.

(2) In the event of an alleged contravention being committed by a CFAOC holder an EMS preliminary review file is to be opened and assigned for investigation if appropriate. During the course of the investigation, if the investigator receives a request from the CFAOC holder (the request must be initiated by the CFAOC holder and it is not appropriate for the investigator to question the CFAOC holder as to their SMS capabilities prior to the CFAOC holder's request) under investigation (or an employee of the CFAOC holder) to be subject to the policy in CAD 107-004 (see note), the following procedures are to be used:

(a) Information related to the contravention is to be forwarded to FID, along with an explanation of the CFAOC holder's request to be subjected to the CAD 107-004 policy.

Note:

For the purpose of application of the Civil Aviation SMS Enforcement policy, the Chief of FID is the EM for any CFAOC holder.

(b) The RME is to request FID to confirm the CFAOC holder meets the requirements of Appendix C in CAD 107-004;

(c) Upon receiving confirmation from FID that the CFAOC holder meets the conditions specified in CAD 107-004, the RME is to forward all information related to the contravention to FID, and close the investigation NFA-SMS; and

(d) In the event that FID determines that the CFAOC holder does not meet the conditions specified in CAD 107-004, the SMS Enforcement policy will not be applied. The investigation is to continue through its normal course, in accordance with the procedures stipulated in this SI.

Note:

It is not intended that this procedure require investigators to initiate a full comprehensive investigation process, including sending a letter of investigation to the offender, when the specific CFAOC holder is already known to meet the requirements of Appendix C of CAD 107-004 and has been previously subject to the SMS enforcement policy relating to an (EMS file) investigation. It is important however to record the basic event data in EMS and ensure that FID is aware of the event. For these events, FID will assume the role of EM for the purposes of applying the Civil Aviation SMS Enforcement Policy, and will complete an event review in accordance with SI SUR-006. Under certain conditions the event review process mandated by SI SUR-006 may require that the matter be referred back to Enforcement for further investigation and subsequent enforcement action.

7.7 Contraventions Involving Foreign Commercial Operators with a Canadian/Foreign Air Operating Certificate

(1) These operators have the authority to conduct air transport services into and out of Canada. The transportation of passengers from a point of embarkation in Canada to a point of disembarkation in Canada on a commercial service is not permitted for these operators unless the transportation of those passengers is part of a contract arrangement authorized by the Canadian Transportation Agency. Suspected incidents of cabotage should be reported to the Canadian Transportation Agency.

7.7.1 Operators with Canadian Foreign Air Operator Certificate

(1) In addition to a CFAOC, these operators must be able to produce a valid certificate from the country that authorized them to conduct air carrier operations. The validity of the CFAOC is based on the validity of that certificate; and

(2) When conducting an investigation of a CFAOC holder, the RME is to liaise with Headquarters Enforcement and the FID during the investigation and when considering sanctions. RMEs may impose administrative penalties, initiate judicial action, or refer cases to the appropriate foreign civil aviation authority. When the RME decides to refer the case to the foreign civil aviation authority, they must forward the completed investigation report to the CE, who will coordinate with the proper authority. Alternately, where the case involves a CFAOC holder based in the U.S.A., the RME may refer the case directly to the appropriate Federal Aviation Administration (FAA) office.

7.7.2 Operators with Canadian Foreign Air Operator Certificate – Free Trade Agreement

(1) The FTA applies to various specialty operators based in the USA, Mexico or other countries signatory to the agreement who are allowed to bid for Canadian contracts as long as the operator meets certain Canadian requirements including obtaining a CFAOC – FTA. Operators who hold a CFAOC-(FTA) are authorized pursuant to Section 700.03 of the CARs to conduct 14 types of Aerial Work in Canada under Subpart 702 of the CARs. TP 4711, the Air Operator Certification Manual contains a list of the various types of Aerial Work. The certificates must be renewed every 12 months by the FID. Only the licensed pilots listed on the Certificate and the aircraft specified by registration number on the Certificate are authorized to operate in Canada.

(2) FTA operators are not authorized to transport cargo or passengers; however, they may be authorized by Operation Specification to carry persons essential to the type of aerial work being done, e.g. carrying firefighters from the base camp to the fire zone.

(3) Under the FTA, contraventions by these operators are to be addressed in the same manner as a contravention by Canadian based operators. National borders may limit the conduct of an investigation and the imposition of sanctions. Since foreign FTA operators are not required to maintain a base of operations in Canada and their work in Canada is usually of short duration it is essential to contact the FID as early as possible during an investigation.

(a) Regional Enforcement personnel must:

(i) Inform Headquarters Enforcement and the FID of the contravention and that an investigation has been initiated;

(ii) For operators based in the U.S.A., if the matter cannot be satisfactorily resolved by the RME with a FAA regional office, refer the case to the CE for coordination with the FID and the FAA Headquarters representatives (direct communication with the operator or the FAA is authorized); and

(iii) For operators from other foreign countries, conduct the investigation in the same manner as in Section 7.7.1 of this SI.

7.8 Contraventions Involving Foreign Commercial Operators without a Canadian/Foreign Air Operating Certificate

(1) Foreign commercial operators operating aircraft in an air transport service must have an authorization to operate in Canada pursuant to Section 701.03 of the CARs. If the operator is not in possession of a Canadian authorization, the operator's presence in Canada is likely, in itself, a contravention, unless extenuating circumstances become apparent. There are several different forms of authorization depending on the activity of the operator while in Canada. For example, an operator may be transiting Canada and have authorization for a technical stop. Often the authorization document is in the form of a "no objection" message which is a document issued to an operator who has indicated an intention to enter Canadian airspace and conduct a specific operation. A Canadian authority then responds that there is "no objection" to the proposed activity. Confirm the status of the operator with the FID.

(2) For any suspected contravention by one of these operators, inform the CE of the contravention and that an investigation has been initiated. Following the investigation, forward the completed investigation report to the CE. The CE will take appropriate action including liaison with the FID, and will coordinate as necessary the notification of the foreign civil aviation authority.

7.9 Contraventions Involving Foreign Private Aircraft

(1) Aircraft from the U.S.: For contraventions committed by American private operators, RMEs may impose monetary penalties or refer cases directly to the appropriate FAA office without referral to Headquarters.

(2) Aircraft from Other Foreign Countries: For contraventions committed by foreign private operators other than American private operators, the RME is to inform the CE of the contravention. The investigation is to be conducted by regional offices and once the investigation is completed, the matter must be referred to the CE for disposition.

7.10 Contraventions by Foreign Operated Aircraft in Gander Oceanic Airspace

(1) The following applies to Gander oceanic airspace:

(a) The Atlantic Region RME is responsible for monitoring Gander oceanic airspace for contraventions by foreign aircraft. The RME will advise the CE of incidents that require investigation;

(b) The CE is responsible for investigating such incidents;

(c) The CE will liaise with the appropriate Headquarters branches and take suitable action, including notifying the appropriate foreign civil aviation authorities when necessary; and

(d) The CE will advise the RME of the outcome of the case.

7.11 Contraventions Involving Balloon Operations, Ultra-light Airplanes, Unmanned Air Vehicles and Special Aviation Events

(1) Special Aviation Events include air shows, balloon festivals, aerobatic competitions, low level air races, fly-ins and demonstration parachute descents.

(2) Because of the specialized nature of operations and authority for operations of these air vehicles and events, it is mandatory to contact the Recreational Aviation and Special Flight operations Division in the event of an occurrence involving these specialty operations. If necessary, contact the Chief of Recreational Aviation and Special Flight operations Division at Headquarters.

(3) For contraventions by a U.S. operator, RMEs may impose monetary penalties or refer cases directly to the appropriate FAA office without referral to Headquarters. For other foreign operators, refer the case to the CE for disposition.

7.12 Requests from Foreign Civil Aviation Authorities

(1) Requests for assistance from foreign civil aviation authorities are normally received in Headquarters and are relayed to the appropriate region for action. Headquarters' involvement is not required where a request comes directly from a FAA regional or district office. Direct requests from other foreign agencies are to be referred to Headquarters. Full TCCA cooperation is expected in keeping with the intent of Article 12 of the ICAO convention (*see Appendix C of this SI for FAA addresses*).

7.13 Contraventions by Transport Canada Employee Canadian Aviation Document Holder

(1) Contraventions committed by departmental employees, including Headquarters Enforcement personnel, are to be handled in the normal manner. Departmental employees are not to be treated differently from any other individual. To minimize the perception of a conflict of interest, certain responsibilities are assigned as follows:

(a) The investigation of contraventions committed by Canadian Aviation Document holders employed at regional Enforcement offices is the responsibility of the CE who may assign the investigation to a Headquarters staff member or may negotiate the conduct of the investigation by a regional Enforcement office other than the one in which the alleged offenders are employed;

(b) The investigation of contraventions committed by Canadian Aviation Document holders employed at the Headquarters, Enforcement office is the responsibility of the regional Enforcement office in the region where the offence occurred; and

(c) The responsibility for investigating contraventions committed by Departmental Canadian Aviation Document holders, other than those mentioned above is to be determined by consultation between the RME, in the region where the contravention occurred and the CE.

(2) TCCA aircraft are state aircraft that TCCA chooses to operate in conformance with existing industry standards. TCCA is not legally required to obtain or maintain an AOC. In spite of the fact an AOC exists for TCCA, a violation of a provision of the Flight Operations Manual or a Standard Operating Procedure is not necessarily a violation under the *Act*. In any case, alleged contraventions committed by Aircraft Services Directorate personnel, in the course of their duties, are to be subject to the Civil Aviation SMS Enforcement Policy, and be handled in accordance with procedures applicable to contraventions committed by an enterprise with an SMS, that are specified in this SI and SI SUR-006.

8.0 COVERT OPERATIONS

8.1 Introduction

(1) Covert operations are surveillance activities conducted in the course of an investigation during which inspectors intentionally present themselves as being someone other than a TCCA aviation official. Prior to commencing a covert operation, the RME must seek the authority of the RDCA. The RDCA must advise the DGCA of the particulars of the case.

8.2 Principles of Covert Operations

(1) The following principles should be considered when planning or conducting covert operations:

(a) All covert operations are to be approved by the RDCA;

(b) RDCA are responsible for the conduct of covert operations in their regions;

(c) Prior to the start of a covert operation, the RME should liaise with the Divisional Criminal Operations Officer of the RCMP to ensure that the operation will not conflict with any known police operations;

(d) The RME are to ensure adequate command, control and communications are exercised during each operation;

(e) Where TCCA contemplates involvement in a joint covert operation, the agency in charge of the operation will be identified prior to the start of the operation;

(f) TCCA may provide technical advice but will not participate actively in a joint covert operation where it is anticipated that activities likely to place an inspector in physical danger will be encountered during the operation;

(g) During the planning stage of a joint covert operation, a contingency plan must be developed that will permit TCCA inspectors to withdraw from active participation in the operation if there is a likelihood that the inspectors personal safety may be jeopardized;

(h) No inspector is to obtain employment in an aviation company for the purpose of gaining access to information or evidence otherwise unavailable;

(i) RDCAs may liaise with other regions to arrange for the secondment of inspectors where local regional inspectors may be too well known to conduct effective covert operations;

(j) The use of third party agents is discouraged. However, if it is considered necessary to employ third party agents, they must only be engaged and controlled during the joint operation by a police authority;

(k) Care must be taken to ensure that the associated investigation is not construed as entrapment; and

(l) The RME is to ensure inspectors are thoroughly briefed for the covert operation and are aware of the guidelines for inspectors.

8.3 Guidelines for Inspectors

(1) Inspectors engaged in covert operations are to be bound by the following guidelines:

(a) In no case is an inspector to counsel or facilitate the commission of an offence;

(b) If other illegal acts are detected during an operation, the appropriate enforcement agency (e.g. RCMP, local police agency, Canada Customs, Dangerous Goods) must be notified;

(c) If an activity that is likely to place an inspector in physical danger is detected, the operation must be abandoned rather than place inspectors at risk. In joint covert operations, the contingency plan developed to withdraw the inspectors from the operation will be activated, ensuring the operation or other operatives are not compromised. Inspectors may continue to provide technical advice and support;

(d) Inspectors conducting an operation are to respect the rights of individuals under the *Canadian Charter of Rights and Freedoms* and the *Privacy Act*; and

(e) Inspectors conducting covert operations must not allow a flight to take place if, in the opinion of the inspector, a condition exists that is an immediate threat to the safety of the flight.

8.4 Training for Inspectors

(1) Prior to participating in a covert operation, inspectors must take a training program approved by Headquarters. Nevertheless, RDCAs may, in exceptional cases, designate inspectors to participate in covert operations if they have had previous experience or training in covert operations or they are accompanied by a police officer or peace officer who has had training or experience in covert operations.

9.0 DETERRENT ACTION

9.1 Introduction

(1) Determining the appropriate deterrent action to impose, when the evidence indicates that there has been a contravention of a provision of the *Act* or the CARs, is a very important decision. The selection of an appropriate enforcement action may significantly affect an individual's or a corporation's attitude towards aviation safety and compliance with the rules in the future. Safety is the primary goal of the deterrent action; "Fairness" and "Firmness" are key elements; these are achieved by uniformity in the selection of the appropriate deterrent action.

9.2 Objectives of Deterrent Action

(1) The major objectives of deterrent action are:

(a) To protect people from harm that could result from non-compliance with regulatory requirements;

(b) To encourage future compliance; and

(c) To deter others from committing a violation.

(2) Compliance contributes to the advancement of aviation safety, which is the primary aim of aviation regulation.

(3) Contraventions committed by enterprises operating under the authority of the CARs raise unique considerations regarding deterrent action; this is because sanctions imposed in respect of a contravention affect not only the enterprise itself but also its employees and the public that it serves. Safety remains the overriding factor. Deterrent measures must impress upon the enterprise that non-compliant activity at the risk of public safety will not be tolerated. Since safety, deterrence and service to the public are all relevant to the regulation of enterprises, the Enforcement Division must maintain close coordination with the appropriate division concerned.

9.3 Types of Deterrent Action

(1) There are two types of deterrent actions: judicial and administrative.

(a) Judicial action involves the prosecution of an alleged offender in the criminal courts. Judicial action is only available for the seven hybrid offences defined in subsection 7.3(1) of the *Act*, and other non-designated provisions of the *Act* and the CARs. For details, refer to Section 11 of this SI.

(b) Administrative action comprises all measures taken by the Minister pursuant to the provisions of the *Act* and includes the suspension or cancellation of Canadian Aviation Documents and the assessment of monetary penalties. For details, refer to Section 10 of this SI.

(2) In addition, in lieu of the preceding, the minister may also conduct oral counselling. It is used when a Canadian Aviation Document holder commits a minor inadvertent violation where the imposition of a sanction is not considered appropriate. It provides the document holder with counselling on the necessity for compliance.

9.4 Selection of Appropriate Deterrent Action

(1) Various types of deterrent action have been established for different classes of offences. To determine which deterrent action is appropriate, it is first necessary to ascertain the class of the particular offence. The classes of offences include:

(a) Designated Provision Offences: Section 7.6(1) of the *Act*

(b) Summary Conviction Offences: Section 7.3(3) of the *Act*

(c) Hybrid Offences: Section 7.3(1) and 7.41(1) of the *Act.*

(2) Appendix B of this SI illustrates the judicial and administrative actions which may be taken in respect of the various classes of offences.

Note:

It is presumed that a minimum enforcement sanction will normally be sufficient to achieve future compliance. Stringent sanctions for a first offence are thought to be more likely to cause resentment than encourage future compliance. Additional details are provided immediately below.

(3) Designated Provisions: The majority of provisions in the CARs that are rules-of-conduct are designated provisions. Contraventions of designated provisions are subject to administrative action in the form of a monetary penalty under sections 7.7 to 8.2 of the *Act* or by a suspension or cancellation under section 6.9 of the *Act*; summary conviction proceedings are not authorized for contraventions of designated provisions *(See section 12 of this SI for a matrix of appropriate*

sanctions for violations of designated provisions.) No prosecutions may be commenced in respect of the contravention of a designated provision, as per 7.6(2) of the *Act.* Punitive cancellations must be recommended to the DGCA by the CE only.

(4) Summary Conviction Offences: All contraventions of the *Act* and of the CARs, which have not been designated, are subject to summary conviction procedures. Where a person has contravened a provision that is not designated, the RME must decide whether to take administrative action by way of suspension under Section 6.9 of the *Act*, or to recommend a judicial action to the Public Prosecution Service of Canada (PPSC).

(a) Where the criteria for judicial action are satisfied, offences may be prosecuted in accordance with the procedural provisions of the Criminal Code. *(See section 11 of this SI for criteria for judicial action).*

(b) Administrative measures are usually more expeditious than prosecutions. Judicial procedures are lengthy and expensive and courts are often unfamiliar with the significance of aeronautics offences.

(5) Hybrid Offences: Hybrid offences are so named because a choice can be made to proceed either summarily or by way of indictment; they are listed in subsections 7.3(1) and 7.41(1) of the *Act*. As with summary conviction offences, where a person has contravened a hybrid provision, the RME must decide whether to take administrative action by way of suspension or cancellation under Section 6.9 of the *Act*, or to recommend judicial action to PPSC. The RME must verify the criteria for judicial action (*see section 11 of this SI*). Punitive cancellations must be recommended to the DGCA by the CE only.

9.5 Joint Judicial-Administrative Deterrent Action

(1) Judicial action and administrative action may be taken simultaneously where evidence discloses that a person has contravened two or more different provisions arising from the same incident provided that each provision violated does not rely on the same facts. An example would be a case where a person has been low flying (contravention of section 602.14 of the CARs) and then willfully omits making the required journey log book entries (violation of 7.3(1)(c) of the *Act*). In this case, administrative action may be taken in respect of the low flying, which is a designated provision. At the same time, judicial action may be initiated for the willful omission of a log entry.

(2) A judicial prosecution for one offence may be accompanied by suspension for another offence only where common facts are not relied on. Judicial and administrative deterrent action is not to be taken in respect of the same contravention. Either one or the other is to be selected depending upon the facts of the particular case.

9.6 Limitation Period

(1) Section 26 of the *Act* expressly imposes a twelve month limitation period on institution of proceedings under Sections 7.6 through 8.2 of the *Act* or by way of summary conviction. The twelve month period begins on the date of the contravention.

(2) The limitation period only applies to the two following types of proceedings:

(a) The imposition of a monetary penalty for contravention of a Designated Provision; and

(b) Court action by way of summary proceedings.

(3) For purposes of calculating the extent of the limitation period, “instituting a proceeding” means:

(a) In the case of the imposition of a monetary penalty, the issuance of a Notice of Assessment of Monetary Penalty; and

(b) In the case of a summary proceeding, the laying of an information.

(4) The one year limitation period specified in Section 26 of the *Act* does not apply to proceedings brought by way of indictment or to administrative suspensions under Section 6.9 of the *Act*. However, it is recommended, to remain consistent with respect to administrative suspension issued under the authority of section 6.9 of the *Act,* not to institute a punitive suspension beyond the 1 year limitation period. (Reference: Minutes of 2011 Enforcement Annual Workshop, held in Vancouver, British Columbia, September 27 – 30, 2011).

(5) When information or a complaint is received about a possible contravention that the limitation period has passed, the complaint is to be closed NIC, limitation period. Under no circumstances is a comprehensive investigation to be initiated when the limitation period has passed.

9.7 Administrative Action

(1) Three types of administrative action which may be taken in response to a contravention of a provision or regulation; these are:

(a) A monetary penalty Section 7.6 to 8.2 of the *Act*);

(b) A suspension of a Canadian Aviation Document (Section 6.9 of the *Act*); or

(c) A cancellation of a Canadian Aviation Document (Section 6.9 of the *Act*).

(2) A monetary penalty can be assessed in respect of a contravention of the designated provisions.

(3) A punitive suspension or cancellation of a CAD can be assessed for a contravention of the designated or non-designated provisions.

(4) All punitive cancellation must be recommended to the DGCA by the CE.

(5) Oral counselling provides the Canadian Aviation Document holder with guidance on the need for future compliance. It is an option for inspectors when the imposition of a sanction is not considered necessary and when all of the following conditions are satisfied:

(a) The contravention is minor and inadvertent;

(b) There is no direct flight safety hazard even though the violation may be safety-related; and

(c) The Canadian Aviation Document holder has no record of a similar type of violation and has a compliant attitude.

(6) Oral counselling is not an option when the alleged offender disputes the allegation.

(7) Oral counselling does not become a part of the Canadian Aviation Document holder's record. However, a completed copy of the detection notice is required to maintain statistical records. After a statistical record has been made, all copies of the detection notice are to be destroyed in accordance with Departmental records' management policy. Oral counselling must not be recorded in the Enforcement Management System (EMS) in cases where no comprehensive investigation was conducted.

(8) Oral counselling is not suitable for a contravention which occurs with an enterprise operating in an SMS framework; the fundamental principle underpinning SMS is that incidents will be documented to ensure appropriate follow-up action on the part of the enterprise.

9.8 Judicial Action

(1) Prosecution for a contravention of a non-designated provision is recommended in all cases where, in the opinion of the RME, the contravention is such that it would provide an appropriate means of deterrence. When proceedings are brought by way of summary conviction, the maximum fine is $25,000 in the case of a corporation. Where proceedings are brought by way of indictment, the amount of the fine is not limited by legislation and is at the complete discretion of

the trial judge. In addition, following judicial action, a prohibition can be sought. Where proceedings are brought by way of summary conviction or indictment, the standard of proof is "beyond a reasonable doubt."

9.9 Punitive Suspension or Cancellation of an Air Operator Certificate under Section 6.9 of the Aeronautics Act

(1) The authority for cancelling an AOC under Section 6.9 of the *Act* rests with the DGCA at Headquarters and with the RDCA in the regions. The authority to suspend under Section 6.9 of the *Act* has been bestowed to the CE and the RMEs.

(2) A punitive suspension of an AOC should only be considered when the air operator has a history of repeat offences (two or more significant offences) and when, in the opinion of the suspending authority, other measures (e.g. monetary penalties) would not promote future compliance. The suspending authority is responsible for reviewing the factors affecting the choice of sanction before the decision is made to suspend an AOC. The suspending authority should consult with and inform the appropriate division manager and discuss:

(a) The technical accuracy of the evidence and findings;

(b) The coordination of concurrent regulatory actions, if applicable; and

(c) The severity of the sanction as a response to the violation.

(3) Once a final decision to suspend has been made, the suspending authority is responsible for following the procedure in section 10 of this SI. Standard practice is to provide an opportunity for an informal meeting with the air operator. The suspending authority may involve the manager from the appropriate division in the meeting with the air carrier representative. *(See section 10.9 of this SI for guidelines on the informal meeting process).*

(4) The imposition of a punitive cancellation of an AOC should follow the same procedure as that for a suspension. For either a suspension or cancellation, the issuing authority for the AOC must be formally advised.

9.10 Multiple or Continuing Violations

(1) The concepts and principles relating to multiple or continuing violations are outlined in Chapter 12 of the Aviation Enforcement Policy Manual. The following procedures are to be used in applying the policy.

9.10.1 Administrative Action for Multiple Violations

(1) In cases of multiple violations, the following procedures are to be used:

(2) For multiple violations of the designated provisions, the Notice of Suspension or the Notice Assessment of Monetary Penalty must include in the statement of offence:

(a) The particulars of each offence, including, if applicable, the date and time of each flight during which a contravention took place; and

(b) The sanction proposed in respect of each contravention.

(3) Evidence to prove each element of each individual contravention must be secured.

9.10.2 Judicial Action for Multiple Violations

(1) In the case of an offence or offences under Subsection 7.3(1) of the *Act*, or a non-designated provision of the CARs, involving multiple violations, where judicial action is the appropriate methodology, the PPSC is to be advised of Transport Canada's preference to lay charges in

respect of each flight conducted in contravention of the regulations; that is, each flight should be set out as a separate count.

(2) PPSC is responsible for considering all the information relating to the case and may exercise its prosecutorial discretion to decide on a course of action that differs from the recommendation provided by Transport Canada. In such cases the Chief, Enforcement must be advised.

9.10.3 Continuing Violations

(1) Where a violation, that was the subject of repeated enforcement action, is ongoing or continues to occur, further action to obtain compliance should be considered.

(2) When the recurring violations involve a Canadian Aviation Document holder , and the repetitive application of punitive measures seems to be ineffective, consideration may be given to suspending or cancelling the Canadian Aviation Document on the basis of public interest, under paragraph 7.1(1)(c) of the *Act*. This certificate action may be considered in addition to any further contemplated enforcement action. Certificate action under 7.1(1)(c) is conducted by the appropriate oversight authority; in this case, the record of repeated enforcement action will be an important factor in making the case for a suspension on the basis of public interest. For additional information, refer to SI SUR 014.

9.10.4 Assessment of Sanction

(1) The assessment of the sanction in all cases of administrative penalty assessment for multiple violations must consider each count separately following the guidelines in Section 12, in particular that the number of sanctions assessed are to be the minimum required to promote compliance.

(2) A brief reason for sanction must be recorded for each count. The total amount of monetary penalty or period of suspension must be the sum total of the sanctions imposed for each count.

(3) The test for whether the total sanction can be seen as reasonable and appropriate must be met in every case.

9.11 Disclosure of Deterrent Action

(1) Enforcement may receive requests for the disclosure of deterrent actions that may contain personal information as defined in the *Privacy Act*.

(2) Section 3 of the *Privacy Act* defines ‘’personal information’’ as ‘’information about an identifiable individual that is recorded in any form’’. Examples of such information are a person’s name, address, age or licence number. This would include but is not limited to an enforcement record that falls within the broad definition and is analogous to criminal history.

9.11.1 Disclosure to Employers

(1) Employers of Canadian Aviation Document holders may be advised of the deterrent action taken if the contravention took place while the alleged offender was on company business. This disclosure falls under the provision of paragraph 8(2)(a) of the *Privacy Act*, in that the information is disclosed for a use consistent with the purpose for which it was obtained. The information is only to be provided when requested by the employer.

(2) If the alleged offender was not on company business at the time of the contravention, the disclosure of deterrent action to the employer is prohibited unless authorized under subsection 8(2) of the *Privacy Act*. An exception may exist where the deterrent action taken against a Canadian Aviation Document holder affects his employment and it is believed that it would definitely be in the public interest, usually in terms of aviation safety, to inform the employer. The question of whether or not to inform an employer must be addressed on a case-by-case basis.

The decision to disclose will be made by the RME after consultation with the Access to Information and Privacy (ATIP) office at headquarters.

(3) Before disclosing any information to the employer, the RME must ascertain that the case is concluded and all possible recourse has expired.

(4) Presumably the employer would be aware of the investigation and is free to ask his employee for an explanation. The Prohibition in the *Privacy Act* applies only to Transport Canada and not the industry (There is an *Act* called the *Personal Information Protection and Electronic Documents Act* (PIPEDA) that governs the private sector companies).

(5) At all times, TCCA must remain compliant with the *Privacy Act.*

9.11.2 Notifying External Detection Sources

(1) An external detection source is a person who is not employed by, or acting on behalf of, TCCA, and has reported an alleged contravention of Canadian aviation legislation to Enforcement.

(2) The RME is to ensure that the external detection source is notified of the outcome of the investigation conducted by Enforcement, or of the decision not to investigate the event, as the case may be.

Note:

For example letters for this purpose, please see Appendix E of this SI.

(3) This notice must be stored for record-keeping purposes, and a brief description of the notification and its contents must be entered in the EMS notes field.

(4) No personal information is to be disclosed to an external detection source, when releasing the outcome of the investigation or the decision not to investigate. If the complainant has sufficient information from other sources to identify what was done or to identify the offender, Transport Canada remains compliant with the Privacy Act as long as TCCA did not disclose any personal information. See Appendix E for a sample notification letter for external detection sources.

9.11.3 Notifying of Internal Sources

(1) An internal detection source is a person or an organization employed by, or acting on behalf of, TCCA, and who has reported an alleged contravention of Canadian aviation legislation to Enforcement.

(2) When the detection source is internal to TCCA, communication must be maintained with that detection source throughout the course of the investigation.

(3) When a preliminary review or an investigation file is closed, the internal detection source (both the inspector and the manager) must be advised in writing of the outcome or of the decision not to investigate the event, as the case may be.

(4) The notification must describe any rationale related to the outcome of an investigation or the decision not to investigate. In order to enhance the effectiveness of future investigations, any issues encountered that may have influenced the outcome, such as exceeding limitation periods, lack of evidence, or any other concerns, should be identified.

(5) This notification may be in the form of an Email or a notification letter, as shown in Appendix E of this SI for external detection source, and must be stored for record-keeping purposes. A brief description of the notification and its contents must be entered in the EMS notes field.

(6) The internal detection source (TCCA) is to be updated at minimum at the following stages of the investigation:

(a) Upon receiving the detection notice;

(b) When the investigation is initiated;

(c) Regular updates during the investigation; and

(d) When the adjudication is made.

9.11.4 Enforcement Action Summaries

(1) Enforcement Action Summaries for Corporate and Non-Corporate offenders will be disclosed on the Enforcement website by Enforcement Standards Branch.

(2) Non-Corporate offenders' summaries will only be disclosed provided no personal information on the offender is included.

(3) Note that aircraft registration would fall within the definition of ''personal information'' as defined in Section 3 of the *Privacy Act*. Since the aircraft registry is public, in certain circumstances, the make and model of an aircraft may also fall within that definition if it is possible to identify the offender through the aircraft registry because of the unusual make and model of the said aircraft.

9.11.5 EMS Interface

(1) Whenever a Canadian Aviation Document such as a pilot licence or permit is suspended, EMS will automatically flag the personnel licensing computer (DAPLS) to prevent that person from obtaining a replacement document in another region. For AME licences that are not in DAPLS this is done manually by advising the Flight Crew Licensing Division.

9.12 Application of Vicarious Liability

Note:

Staff Instruction SUR-006 and the decision matrix contained in Appendix A of this SI regarding enforcement action and SMS Enterprises are to form part of the references to be used in the appropriate implementation of these procedures.

(1) Vicarious liability is a legal mechanism that allows for third parties to be found liable for contraventions committed by another person. Section 8.4 of the *Act* specifies the parties that can be found to be vicariously liable:

(a) The registered owner of an aircraft;

(b) The operator of an aircraft (as per Section 101.01 of the CARs);

(c) The pilot-in-command of an aircraft; or

(d) The operator of an aerodrome or other aviation facility.

(2) It should be noted that not all parties can be proceeded against using Section 8.4 of the *Act*; only the parties specifically identified. For example, vicarious liability is not available in the case of services such as an approved maintenance organization (AMO), an Air Navigation Service provider (ANS), any Air Traffic Service provider (ATS) or any AMO, ANS, or ATS personnel. Section 8.4(d) of the *Act* does not apply to services; it is restricted to aviation facilities only.

(3) Vicarious liability provides a mechanism whereby the specified parties may be found liable for a contravention committed by another party and subject to a penalty for that contravention. Deterrent action may be taken against the party directly liable for a contravention as well as against another party that is vicariously liable for a contravention. This may be done when the vicarious party or both parties bear some responsibility for causing the contravention to occur. Section 8.4 of the *Act* provides an exception to vicarious liability for a specified party, where the evidence indicates that aircraft was in the possession of another person without the owner or

operator's consent, or the contravention was committed without the consent of the pilot-in-command or the operator of the aerodrome or facility.

(4) Section 8.4 of the *Act* is used to establish liability for actions, or lack thereof, for the parties (identified in Section 8.4 of the *Act*) that may have contributed to a contravention. Where one party has power or influence over another, the party having the influence could be found liable for any contraventions committed by the party over which they exercise that influence. Liability may be attached through involvement in the contravention, involvement in the decision to contravene, or through negligence in the control of the circumstances that led to the contravention. The context for the application of vicarious liability, as expressed in the *Act*, is focused on the principle of penalizing a person that bears some responsibility for a contravention committed by another person.

(5) It is not the purpose of Section 8.4 of the *Act* to inappropriately apply multiple sanctions, to apply higher sanctions where they are not warranted, or to penalize a person who was not involved in, or responsible for a contravention. It is the purpose of Section 8.4 to apply sanctions to persons, other than the offender, who bear some responsibility for the contravention.

(6) To establish when it is appropriate to apply vicarious liability, a detailed examination of the evidence, and circumstances surrounding the contravention, is required. It is necessary to prove the elements of the basic contravention itself before vicarious liability can be considered. The following criteria must be considered and used in the analysis to determine when the use of vicarious liability is appropriate:

(a) Level of cooperation relating to the ability to identify individual/offender;

(b) Knowledge & participation of employee and/or employer;

(c) Who will gain the most from the contravention;

(d) Extent to which the individual who committed the contravention did so without knowledge or complicity of the operator/owner;

(e) Repetitive similar contraventions by others within the organization;

(f) Operator's or owner's level of involvement in offence;

(g) Operator's or owner's corrective actions;

(h) Similar occurrences or non-compliance trends relating to the operator/owner; and

(i) Company culture & history.

(7) Not all of these considerations will apply in every case; however, each of them must be considered and their applicability determined based on the evidence available.

(8) After evaluating the considerations listed above an analysis of the case must take place. The authority granted under Section 8.4 of the *Act* to apply penalties to other or additional entities that may be vicariously responsible for a contravention, but who did not actually commit the contravention adds to the complexity of this analysis. In each case a detailed and objective examination of the circumstances surrounding the contravention, against the criteria for consideration above, and the key elements that follow, is required.

(9) The key elements to be used for the determination of vicarious liability and appropriate sanctions are:

(a) Developing an understanding of each party's role and responsibility in the occurrence using the criteria above,

(b) Determine the status of the party (owner, operator, crew member, etc.) with respect to the regulations,

(c) Analysis of the wording of the applicable provision, and

(d) Determining whether the vicariously liable party is an individual or a corporation.

(10) The application of vicarious liability can be somewhat complex; however, the following examples should provide some guidance to assist in the appropriate application of the legal principles involved. - Note the importance of the key elements in understanding each of the examples. It is not possible to provide examples that cover every circumstance that may arise and there may be cases where consultation with the Chief, Enforcement may be advisable.

9.12.1 Contravener is not the Registered Owner or a Corporate Owner

(1) In situations where the contravener is neither the registered owner of the aircraft nor the owner of the corporation that owns the aircraft (this may also apply in the case of an operator of an aircraft, airport or facility), and where the language of the provision being contravened contains wording such as "*The pilot in command shall …"* enforcement action against the individual is available or, if the circumstances warrant it, vicarious liability could be applied against the third party (registered owner, etc.). If there was shared responsibility in the contravention, both parties could be sanctioned. In all cases, the individual or corporation penalty level would apply depending on whether the party is an individual or a corporation.

(2) In this same circumstance, if the provision were to say "*No person shall…"* enforcement action directly against the contravener is available and, depending on the wording of the rule, vicarious liability may or may not be necessary to take action against the registered owner, etc. For example, there may be situations where the description of the contravention makes it clear that it could only committed by an individual. In the case of *"No person shall perform a take-off …"* the action can only be carried out by the individual performing the take-off and section 8.4 would need to be invoked in the event it is decided to also, or alternatively, hold the operator of the aircraft vicariously liable for the contravention.

(3) Additionally, instead of any action taken against the actual contravener, enforcement action may be taken solely against the registered owner or operator of the aircraft and again the individual or corporation penalty level applies depending on whether the registered owner is an individual or a corporation.

9.12.2 Contravener is an Individual and the Corporate Owner

(1) The application of the individual or corporate sanctions must be applied carefully in circumstances where the contravener is the same individual behind a corporate entity (Non-Part VII Operation) owning the aircraft used for the commission of the offence. In these circumstances the principle of shared responsibility cannot logically be applied to two completely distinct entities and therefore only one sanction must normally be applied. Operations under Subpart 604 of the CARs require an SMS. Therefore cases involving a Subpart 604 of the CARs operator will be addressed in the same manner as a Part VII operator with an SMS.

(2) Where the language of the provision is similar to "*The pilot in command shall …"* enforcement action against the pilot in command is always available without invoking the vicarious liability provision of the *Act* and the individual penalty level will always apply. It is Enforcement's policy that, vicarious liability must not be used to institute a corporate level sanction against the corporate entity owning the aircraft except in situations where action cannot be taken against the pilot in command.

(3) In the case where the provision uses language similar to "*No person shall ….",* enforcement action against the contravener is to be normally applied at the individual penalty level. Vicarious liability against the third party at the corporate level may be available; however, it is Enforcement's policy, that it will only be used when direct action against the contravener at the individual level is not available such as in circumstances where the corporate owner/operator refuses to provide records or information pertaining to the actual contravener. There may be situations where the wording of the rule indicates that the entity responsible for compliance with

the rule is the owner or operator of the aircraft - i.e. *"the registered owner shall …*" In these cases, enforcement action directly against the owner or operator is appropriate, and in such cases, it will be the only sanction, and the corporate level penalty is to be applied only when the owner or operator is a corporation.

(4) In exceptional circumstances, there may be a case where a contravener, who is an individual and the owner/president/major shareholder of the corporation that is the registered owner of the aircraft, profits substantially from a deliberate and intentional contravention or repeated or multiple contraventions. In such circumstances it may be appropriate to sanction the corporation with a corporate level penalty in order that the sanction can be seen as consistent with the policy of being fair and firm in relation to the magnitude and repetitive nature of the contravention(s).

9.12.3 Subordinate Relationship

(1) In situations where a subordinate relationship exists between a third party and the contravener, the determination of shared or dominant responsibility is important for sanctions to be applied fairly. The most common situation is one where there is an employer/employee relationship.

(2) In these circumstances, when the provision says "*The pilot in command shall…*", or is similarly worded, enforcement action against the pilot in command may be taken at the individual level and where the circumstances demonstrate a shared responsibility, enforcement action may also be taken against the third party (the employer) by invoking the vicarious liability provision in the *Act*, with the individual or corporation penalty level applying depending on whether the employer is an individual or a corporation. Where the circumstances are such that there is a dominant relationship by the employer, vicarious liability may be applied and enforcement action may be taken exclusively against the employer. Again, the individual or corporation penalty level would apply depending on whether the employer is an individual or a corporation.

(3) In the case where the provision is worded "*No person shall…*" the enforcement actions are the same as the previous paragraph with one additional option. There may be circumstances where the wording of the rule indicates that enforcement action against the employer is appropriate, for example Subsection 700.02(1) of the CARs states *"No person shall operate an air transport service unless the person holds and complies with the provisions of an air operator certificate that authorizes the person to operate that service"*, in this case the pilot could not be found to be vicariously liable for the actions of their employer who is operating the commercial air service and the individual or corporation penalty level would apply to the person operating the commercial air service depending on whether the employer is an individual or a corporation.

9.12.4 Second-in-Command

(1) In a situation where a contravention is committed by a pilot who is Second-in-Command and where the provision uses language such as "*No person shall conduct a take-off….*" if the second-in-command is the person conducting the take-off, enforcement action against the second in command is available at the individual level. The pilot-in-command may also be held vicariously liable and enforcement action at the individual level may be applied in addition to or instead of action against the second-in-command depending on the circumstances. Vicarious liability for the pilot-in-command would not apply in circumstances where the contravention was committed, without the pilot-in-command's consent.

9.12.5 Operating a Commercial Air Service without an AOC in Contravention of Section 700.02 of the CARs

(1) Vicarious liability need not be applied in the case of a person operating a commercial air service (of a type defined in Part VII of the CARs) without an AOC since the wording of the rule can be applied directly against the person who is *"directly or indirectly charging, demanding, receiving or*

collecting" the compensation (see definition of "hire and reward" in Section 3(1) of the *Act*), regardless of whether the person is an individual or a corporation.

Note:

It is important to note that operating a commercial air service without an AOC is not a contravention of section 700.02 of the CARs unless it is a commercial air service that is an "air transport service" (see definition section 101.01 of the CARs), or an air service conducting the types of aerial work described in subsection 700.02(2) of the CARs.

(2) Vicarious liability may be applied against the owner or operator of the aircraft where the person operating the commercial air service without an AOC, is not the owner or operator of the aircraft used in the commercial air service. In this case vicarious liability may be applied where it has been determined that the owner or operator of the aircraft bears a shared responsibility for the contravention(s).

(3) In some cases vicarious liability against the pilot may also apply if it is determined the pilot was complicit in the operation of the commercial air service. Vicarious liability may be required when the pilot was not the person directly or indirectly charging, demanding, receiving or collecting the compensation for the air service, rather the pilot was being compensated solely for operating (flying) the aircraft. It should be noted that a pilot who is appropriately licensed to receive compensation for the operation of an aircraft is not committing an offence by doing so, even if the operation of the aircraft is in respect of the operation of a commercial air service without an AOC.

9.12.6 SMS Enterprises

(1) The Staff Instruction and decision matrix (SI SUR-006) regarding enforcement action and SMS Enterprises is to be used in conjunction with these procedures. One of the basic tenets of a functioning SMS is to promote compliance. The nature and construct of the SMS regulations and policies place SMS enterprises in a situation where they are always assumed to be vicariously liable for any contravention committed by any employee of their enterprise. Therefore, by policy, in the case of a contravention by an employee of an SMS enterprise, where SI SUR-006 processes lead to the initiation of enforcement action, Section 8.4 of the *Act* will be used to proceed against the enterprise itself. Again, it is important to remember that it is necessary to prove all of the elements of the basic contravention by the individual before vicarious liability can be applied.

(2) There may be circumstances where the investigation reveals a serious systemic failure warranting action directly against the enterprise as a result of a contravention of Section 107.02 of the CARs relating to the SMS, in addition to, any action taken against the enterprise vicariously for the contravention by an individual.

(3) In cases where the non-compliance event relates to a serious contravention committed intentionally by an employee of an enterprise with an SMS—who has subsequently left the enterprise as a result of the event—and it is felt that enforcement action is appropriate against the individual, enforcement action may then be taken against the ex-employee. This type of action against the individual who committed the contravention does not negate the enterprise's responsibility to develop appropriate corrective measures aimed at addressing the event. Coordination with the enterprise manager may be necessary to insure that the appropriate measures are implemented.

10.0 ADMINISTRATIVE ACTION

10.1 Introduction

(1) Administrative action comprises all deterrent measures, other than judicial action, taken by the Minister of Transport pursuant to the provisions of the *Act*. Administrative action in the form of a suspension or oral counselling can be used not only for designated provisions offences but also for summary conviction and hybrid offences where otherwise judicial action would be required to attain a fine or jail term. Almost all deterrent actions taken by TCCA are administrative actions. They are usually resolved quickly yet give the offender access to a review and the full process of natural justice.

10.2 Administrative Action Options

(1) There are two categories of administrative actions which may be taken by Enforcement offices when a contravention has occurred. Determination of the appropriate action depends upon policy considerations and the circumstances of each contravention.

10.3 Preventive Action

(1) If a comprehensive investigation is concluded with an oral counselling, that fact is recorded in EMS and the file is closed as an NFA. The EMS file will be de-identified by Enforcement Headquarters.

10.4 Administrative Sanctions

(1) Administrative monetary penalties may be assessed where there has been a contravention of a designated provision. The monetary penalty procedures are set out in Sections 7.6 to 8.2 of the *Act*.

Note:

Prosecution by way of summary conviction is not available for contravention of a designated provision. (Reference: ss.7.6 (2) of the Act.)

(2) A punitive suspension may be taken in respect of any contravention of a provision of Part I of the *Act* or the CARs. (Reference: s. 6.9 of the Act.)

10.5 Administrative Action: Selection and Process

10.5.1 General

(1) Contraventions of designated provisions may be dealt with either by suspension or by assessment of an administrative monetary penalty. When contraventions of non-designated provisions are dealt with administratively the only sanction that may be imposed is suspension of a Canadian Aviation Document.

(2) Simultaneous administrative and judicial enforcement action under the *Act* may be taken for different contraventions arising out of the same circumstances, but this is very rare. For the limited number of offences where there is an option, administrative and judicial enforcement action is not to be taken in respect of the same contravention; one or the other must be selected depending upon the facts of the particular case.

(3) When, in the opinion of the RME, aviation safety is an issue, or, in the case of an air operator, the violation was associated with the “cost of doing business” or was a way of reducing operating costs, the minimum penalty imposed is to be the penalty recommended in section 12 of this SI.

10.5.2 Procedures for Administrative Monetary Penalties

(1) When the RME receives a case report from the investigating inspector, the RME may assess an administrative monetary penalty as a sanction, depending whether or not a monetary penalty is recommended in that report.

(2) The RME must determine the amount of the penalty that is appropriate, considering the Table of Sanctions set out in Section 12 of this SI.

(3) The RME must complete the Notice of Assessment of Monetary Penalty form which is in accordance with Subsections 7.7(1) and (2) of the *Act*, and Subsection 103.08(3) of the CARs. *(See Appendix E of this SI for a sample form)*. The Notice must contain a clear description of the offence and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.

(4) With the Notice, the RME is to enclose an Informal Meeting Notice describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction. *(See Appendix E of this SI for a sample Informal Meeting Notice).*

(5) The RME must serve the Notice on the alleged offender personally or by registered or certified mail. The date appearing on the Notice must be the date on which the Notice is to be served or sent.

(6) The monetary penalty may be paid by certified cheque or money order made payable to “The Receiver General for Canada” and may be sent by mail or brought personally to the RME or appointed delegate. Certain credit cards will also be accepted. An official receipt will be issued.

(7) A person’s notation(s) of assessment of monetary penalty (ies) must be kept in the corresponding “Protected” 5504 enforcement file. Individuals may apply to have any notation of sanction removed from their records by applying for “removal of notation of sanction” as outlined in section 13 of this SI.

(8) Should the monetary penalty not be paid by the due date (a minimum of 30 days not counting the day the Notice is served), and the alleged offender has not requested a review by the TATC, the alleged offender is to be deemed to have committed the offence. In this case, the RME has the authority to order the suspension, refusal to issue, amend or renew the appropriate Canadian aviation document until the penalty is paid in full. Refer to 10.7.3 for more details.

(9) Should the TATC be called upon to review the decision, the procedure for a TATC review must be followed? Contact the Chief, Advisories and Appeals for further guidance.

10.5.3 Procedures for Administrative Punitive Suspension

(1) The suspension of a Canadian Aviation Document for contravention of a provision of the *Act* or CARs is one of the administrative sanctions 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 and judicial action is either not available or inappropriate.

(2) Where a Canadian Aviation Document has been suspended, the person to whom it was issued must return it to the Minister (Section 103.03 of the CARs) and must not exercise the privileges of that document until it is returned by the Minister. Suspensions for contravention are punitive in nature and are in effect for a specified time period.

(3) When an RME has decided to impose a suspension, he is to determine the appropriate duration of suspension by considering the Table of Sanctions in section 12 of this SI and the recommendation of the investigating inspector.

(4) The RME must complete the Notice of Suspension in accordance with Subsection 6.9(1) and (2) of the *Act* (s*ee Appendix E of this SI for a sample form)*. It must contain a clear description of the

offence, and sufficient detail of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.

(5) With the Notice, the RME must enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction. *(See Appendix E of this SI for a sample Informal Meeting Notice.)*

(6) In order to allow the alleged offender to conduct unrelated aeronautical activities, the notice must also inform the alleged offender of the possibility of obtaining a temporary medical certificate.

(7) In addition, if the alleged offender holds more than one licence or permit, the notice must also inform him or her of the possibility of obtaining a temporary license or permit for Canadian Aviation Documents that have not been suspended.

(8) The RME must serve the Notice on the alleged offender personally or send it by registered or certified mail. The date appearing on the Notice must be the date on which the Notice is to be served or sent.

(9) If the alleged offender holds more than one license or permit, the alleged offender has the right to obtain temporary Canadian Aviation Documents for permits and licenses that have not been suspended by replying to the note enclosed with the Notice of Suspension. In this case, the alleged offender must obtain a temporary medical certificate and the relevant temporary Canadian Aviation Documents from the Flight Crew Licensing Division. These documents are valid for 90 days from the date they are issued. With these documents, the alleged offender can surrender the Aviation Document Booklet to the Enforcement Division and continue exercising the privileges contained in the Canadian Aviation Documents that have not been suspended.

(10) Where the alleged offender requests a review by the TATC and applies for a stay of suspension pending its decision, the RME must not oppose the application unless it appears that a threat to aviation safety would result. In such a case, the RME or his designate must present the Department's position to the TATC.

(11) An individual's notation(s) of license suspension(s) is to be kept in the corresponding "Protected" 5504 enforcement file. Persons may apply to have any notation of sanction removed from their records by applying for "removal of notation of sanction" as outlined in Section 13 of this SI.

(12) Although an alleged offender may deliver the suspended aviation document to the RME or the RME's appointed delegate before the effective date of the suspension, the suspension cannot take effect before the effective date (i.e., no earlier than 30 days from service or mailing date) unless a Waiver form has been signed by the offender relinquishing the right to appeal before the TATC. *(See Appendix E of this SI for a sample waiver form)*.

(13) Should the alleged offender not request a review by the TATC within 30 days, the alleged offender is to be deemed to have committed the offence. In this case, the RME has the authority to order the suspension, refusal to issue, amend or renew the appropriate Canadian aviation document until the original suspension is served. Refer 10.8.2 for more details.

(14) Where the alleged offender does not ask for a review by the TATC within 30 days and then fails to deliver the suspended document, after giving due consideration for delay in the mail, a monetary penalty is to be assessed for contravening Section 103.03 of the CARs. Prior to assessing the monetary penalty, the document holder should be contacted to confirm the situation.

(15) Where the distance between the accused and the Regional Enforcement office or the brevity of the suspension precludes the return of the document to the Minister, the RME may suggest that the document be surrendered to the local detachment of the RCMP or to the local police for the duration of the suspension. The investigator involved with the case must confirm the surrender of the document. *(See Appendix E of this SI for a sample letter.)*

(16) When the Canadian Aviation Document suspended is a pilot's license or permit, EMS will automatically flag the personnel licensing database (DAPLS) to prevent the printing of a replacement license or permit during the period of suspension.

(17) When the CAD suspended is an AME's licence, notification should be sent to the appropriate contact to have the AME database updated to indicate the suspension.

(18) On notification by the TATC of a review of the suspension decision, the RME must contact the Chief, Advisories and Appeals for further guidance.

10.5.4 Cancellation

(1) Authority to cancel a document for enforcement reasons under Section 6.9 of the *Act* has been bestowed to the DGCA and the RDCAs, not to RMEs.

10.6 Debt Payment Deferral Agreement

(1) When requested by the contravener, a debt payment deferral agreement may be entered into by Enforcement and the offender at any time during an informal meeting, or before or after a request for a TATC review or appeal has been filed. Such an agreement is intended to encourage voluntary debt payment and avoid all forced debt recovery enforcement action.

(2) The regional manager must read the payment agreement to the offender and explain it such that the offender understands the conditions as well as the consequences of missing a payment term.

(3) The debt payment deferral agreement form includes all the clauses that are considered essential and these clauses should be included as an integral part of all agreements. As each case is unique, the debt payment deferral agreement form may be modified to include the particular circumstances of each agreement. Except in exceptional circumstances, it is recommended, that:

- (a) The first payment be at least a third of the total amount of the debt, in order to ensure the offender's good faith and willingness to pay, and it should be payable immediately upon signing the agreement;
- (b) The deferral of the payments must be reasonable according to the amount of the debt. The payments must be significant and proportional to the offender's ability to pay and the payment agreement should not extend beyond a twenty four (24) month period;
- (c) If a request for review or appeal has already been filed before the TATC, a review withdrawal must be signed by the offender at the same time as the payment deferral agreement is signed, and filed in the TATC's registry; and
- (d) It is at a regional manager's discretion to enter into any agreement that may encourage voluntary debt payment.

(4) In case of a default on one or more of the payments, the payment agreement will become null and void, and the amount indicated in the notice of assessment of monetary penalty will be due. In accordance with section 7.92 of the *Act*, the Minister may obtain from the TATC a certificate that indicates the amount of the penalty specified in the notice.

(5) Sample *Debt Payment Deferral Agreement* forms are included in Appendix E of this SI. There are two different agreement forms, depending on whether the offender has applied to the TATC for a review or appeal, or not.

10.7 Non-payment of a Debt

10.7.1 General

(1) The *Act* prescribes the various amounts that, under certain conditions of expiry of time limits established in Section 8.2 of the *Act*, for payment of a penalty, may constitute debts owed to Her Majesty in Right of Canada as a result of enforcement action taken by the Minister. These amounts include:

(a) The amount set out in a notice of monetary penalty (Subsection 7.7(1) of the *Act*) unless a TATC review of that amount is requested under Section 7.91 of the *Act*;

(b) The amount payable as determined by the TATC after a review under section 7.91 of the *Act* or on appeal under Section 8.1 of the *Act*; and

(c) Reasonable expenses incurred by the Minister attendant on the registration of the certificate.

(2) When a person fails to pay one of the debts listed above all reasonable actions, including simultaneously actions to collect that debt, are to be considered.

10.7.2 Certificate of Debt

(1) A certificate issued by the TATC, pursuant to Subsection 7.92, 8(b), or 8.1(4) of the *Act*, must be obtained prior to any debt collection action.

(2) Except in the case of debt collection by way of Canadian Aviation Document suspension, pursuant to Section 7.21 of the *Act*, registration of the certificate is to be sought before any debt recovery action is undertaken by either the Minister or on the Minister's behalf by agencies including the DOJ.

(3) Pursuant to Subsection 8.2(1) of the *Act*, on production to the Federal Court, a certificate made under Subsection 7.9(2), 8(b), or 8.1(4) of the *Act* is to be registered in that Court and, when registered, has the same force and effect, and all proceedings may be taken on it, as if it were a judgment in that court obtained by Her Majesty in right of Canada against the person named in the certificate for a debt of the amount set out in the certificate.

10.7.3 Certificate Issued by the Transportation Appeal Tribunal of Canada

(1) When a person fails to pay the amount of the penalty specified in a notice under Subsection 7.7(1) of the *Act* within the time indicated in the notice, and does not file a request for a review with the TATC under Subsection 7.91(1) of the *Act*, the person is then deemed to have committed the contravention alleged in the notice. A certificate pursuant to Section 7.92 of the *Act* must be requested from the TATC.

(2) Where the monetary penalty specified in the determination of the TATC following a review or appeal has not been paid in the time allowed, the TATC will automatically issue a certificate to the Minister, pursuant to paragraph 8(b) or Subsection 8.1(4) of the *Act*, as applicable.

(3) A written request to obtain a certificate from the TATC issued pursuant to Section 7.92 of the *Act*, should be sent to:

Registrar

Transportation Appeal Tribunal of Canada

333 Laurier Avenue West, Suite 1201

Ottawa (ON) K1A 0N5

Fax: 613-990-9153

(4) The request for a TATC certificate should include:

(a) Copy of the original notice of monetary penalty or notice of default; and

(b) Registered mail internet-obtained proof-of-service of the notice or an affidavit for personal service of the notice.

10.8 Debt Recovery Options

10.8.1 General

(1) When a debt as described in Section 10.7.1 of this SI has not been paid, one or more of the following options may be used to obtain payment from the contravener:

(a) Suspension of a Canadian Aviation Document under Section 7.21 of the *Act*;

(b) Collection processed by TCCA; and

(c) Collection processed by the DOJ.

(2) To initiate one or more of these options requires that a certificate of debt be issued by the TATC and, except in the case of Canadian Aviation Document suspension only under Section 7.21 of the *Act*, the certificate must be registered in the Federal Court. In the case of a Canadian Aviation Document suspension, the Canadian Aviation Document used in the commission of the contravention must be the document suspended.

10.8.2 Suspension of a Canadian Aviation Document for an Unpaid Debt

(1) Notwithstanding any other simultaneous debt collection action, the preferred collection action on an unpaid debt is to suspend, or refuse to issue or amend an applicable Canadian Aviation Document pursuant to Section 7.21 of the *Act*. The Minister may suspend the Canadian Aviation Document pursuant to Section 7.21 of the *Act* if a certificate has been issued by the TATC in respect of an unpaid penalty.

(2) When the certificate is received, it is recommended that the person be sent a Letter of Non-Payment of Monetary Penalty (*see Appendix E of this SI*) as an opportunity of last chance to pay the debt within a reasonable period of time.

(3) Once the certificate has been issued, the Minister may serve the contravener, either by personal service or by registered mail, with a Notice of Suspension for Non-Payment of a Monetary Penalty, in accordance with Section 7.21 of the *Act*. Such a suspension must not begin before 30 calendar days from the date the Notice was served. This suspension is not subject to review by the TATC, and the Canadian Aviation Document is to be suspended until the outstanding amount of the monetary penalty is paid in full, or payment terms are agreed upon between the Minister and the contravener.

(4) Upon receipt of the suspended Canadian Aviation Document, the TCCA issuing authority responsible for that Canadian Aviation Document should be advised that the document has been suspended. Failure by the contravener to surrender the Canadian Aviation Document, as indicated in the Notice of Suspension for Non-Payment of a Monetary Penalty, should be considered a contravention of Section 103.3 of the CARs.

(5) If the individual holds more than one license or permit, the Minister must not issue, re-issue, or make changes to a Canadian Aviation Document for this individual until the debt has been paid in full. No temporary document for the valid licenses, permits, and privileges will be issued to the offender.

(6) Once the outstanding payment of the penalty has been received, the issuing authority of the suspended Canadian Aviation Document should be advised that the suspension has been lifted and that the document has been returned to the holder.

10.8.3 Collection Processed by Transport Canada

(1) Collection of a debt processed by the Transport Canada Financial Unit is one avenue of debt collection that may run simultaneously with the suspension of a Canadian Aviation Document under Section 7.21 of the *Act* and it may run simultaneously with debt collection action by the DOJ. Agencies outside of TCCA have their own internal methods of debt collection including Canada Revenue Agency set-off, where a tax return normally payable to the contravener may, instead, be applied against the debt owed and paid to Her Majesty in Right of Canada.

(2) A written request for collection action may be send to the TCCA Finance Unit. Where applicable, this request should include:

(a) A copy of the notice of suspension for non-payment of a monetary penalty or a copy of the notice of monetary penalty, or a copy of the TATC review determination or appeal decision;

(b) Registered mail internet-obtained proof-of-service of the applicable notice or an affidavit for personal service of the notice;

(c) A copy of the certificate of non-payment issued by the TATC, registered in the Federal Court pursuant to Subsection 8.2(1) of the *Act*; and

(d) The financial coding specific to the region from which the monetary penalty originated.

Fig. 10.1 – Financial Coding

Region	Administrative Monetary Penalty	Court Awarded Fines
Atlantic	5540-P1A-602-761N	5540-B16-602-762N
Quebec	56F1-P1A-602-761N	5640-B16-602-762N
Ontario	5740-P1A-602-761N	5740-B16-602-762N
Prairies and Northern regions	5840-P1A-602-761N	5840-B16-602-762N
Pacific	5940-P1A-602-761N	5940-B16-602-762N
National Capital region	54G4-P1A-602-761N	54G4-B16-602-762N

(3) The written request and documentation should be sent to:

AccountingNCR-Billing@tc.gc.ca

Supervisor, Revenue Accounting

AFFAH

Ottawa, Ontario

K1A 0N8

Fax: 613-998-5052

(4) This debt collection action may involve coordination with or subsequent action by agencies outside of TCCA including the DOJ or the Canada Revenue Agency.

10.8.4 Collection Processed by the Department of Justice

(1) Collection of a debt processed by the DOJ is another avenue of debt collection that may run simultaneously with the suspension of a Canadian Aviation Document under Section 7.21 of the *Act* or any other action initiated by TCCA.

(2) A written request for collection action may be sent to the DOJ. Where applicable, this request should include:

(a) A copy of the notice of monetary penalty, the notice of suspension for non-payment of a monetary penalty or a copy of the TATC review determination or appeal decision;

(b) Registered mail internet-obtained proof-of-service of the applicable notice or an affidavit for personal service of the notice; and

(c) A copy of the certificate of non-payment issued by the TATC, registered in the Federal Court pursuant to Subsection 8.2(1) of the *Act*.

(3) The written request and documentation should be sent to the provincial office of the DOJ where the contravener's principal residence is located (*see Appendix C of this SI*).

10.9 Informal Meeting

10.9.1 General

(1) 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 sanction. Keeping in mind that the objective of the sanction is to obtain future compliance and provide deterrence to others, the RME may modify or amend the original decision. This may be done when new evidence of a statutory defense or mitigating factors come to light, or when the RME obtains the assurance, during the discussion, that the alleged offender will comply in the future.

(2) RMEs may conduct informal meetings with alleged offenders in person, over the telephone or other electronic medium, or through written submissions. During an informal meeting, RMEs may enter into penalty negotiations with a view to reaching a settlement in the case, thereby closing the file. Any discussions during the informal meeting are predicated on the fact that the alleged offender or the alleged offender's representative will not question the finding of the investigation.

(3) The alleged offender normally has 30 days from the date the Notice is served or sent to accept the offer and meet with the RME. However, if the alleged offender has requested a TATC hearing, the informal meeting can take place any time before the TATC hearing. The RME is to arrange the time, date and place for the meeting. *(See Appendix E of this SI for a sample informal meeting information sheet.)*

10.9.2 Penalty Negotiation Considerations

(1) The following factors are to be considered in deciding whether to enter into penalty negotiations or not:

(a) Evidence of mitigating factors not previously identified during the investigation;

(b) The alleged offender's enforcement record;

(c) The seriousness of the offence;

(d) The attitude of the offender toward future compliance;

(e) The effect of the negotiated sanction towards future compliance;

(f) The financial burden on the alleged offender of costs associated with TATC proceedings; and

(g) Whether negotiations with a particular alleged offender would bring the enforcement program into disrepute.

10.9.3 Informal Meeting Procedure

(1) Penalty negotiations may take place directly with the alleged offender, the alleged offender's representative, or both. The RME is to begin by briefly explaining the purpose of the meeting and reminding the alleged offender that only the type and amount of sanction may be discussed and not the finding of a contravention.

(2) The alleged offender is to be asked to state his purpose for seeking the meeting and give any reason or special circumstance in support of a modification of the sanction.

(3) Discussions held during negotiations are "without prejudice". Should no settlement be reached, new evidence revealed by the alleged offender during penalty negotiations must not be disclosed at subsequent proceedings. Under no circumstances must the substance of negotiations, an agreement or any matter relating to a negotiated penalty be discussed with, or provided to, the TATC by the Minister.

(4) Any documentary evidence offered is to be included in the case file only when an agreement has been reached.

(5) The RME must consider any request and make a decision at the meeting.

(6) The factors in Section 12.2 of this SI affecting the choice of sanction also apply in deciding whether or not to reduce the original penalty. RMEs must not, however, reduce the penalty by more than 30% even in extraordinary circumstances. When aviation safety is an issue, or, in the case of an air operator, the violation was associated with the "cost of doing business" or was a way of reducing operating costs, the RME must be prepared to maintain the penalty at the level at which it was initially imposed. In these situations, the final penalty assessment for a first offence must not be less than the amount recommended in the first offence column of the Table of Sanctions unless extraordinary circumstances prevail. Similarly, second and subsequent offence penalties are not to be reduced by more than 30%. When a substitution from a monetary penalty to a suspension, or vice versa, is contemplated, the appropriate equivalent should be chosen from the Table of Sanctions in Section 12 of this SI. Any significant departure from the table of sanctions must be justified and recorded in EMS.

(7) The RME should assess the potential impact the suspension of a document may have upon the alleged offender. Suspension may cause severe economic hardship to a person, particularly if the document is required to earn a living. The ultimate question, in cases where aviation safety is not an issue, is whether the contravention is serious enough to justify this sort of disturbance to a person's livelihood. As a general rule, where monetary penalties have been or are likely to be ineffective in achieving compliance, suspension will be justified.

(8) Where the agreement contemplates a period of suspension, the person affected must sign a waiver form relinquishing their rights under Section 6.9 of the *Act*, specifically the right to 30 days further notice of suspension and the right to have the decision reviewed by the TATC. A waiver is not required when a monetary penalty is paid. *(See Appendix E of this SI for a sample waiver form)*.

(9) The RME must explain to the alleged offender that any modification to the sanction is to be made conditional on immediate compliance with the sanction agreed upon.

(10) An agreement reached with an authorized representative of the alleged offender must not be put into effect until a direct confirmation is obtained from the alleged offender.

(11) If a settlement agreement is reached, the substance of the discussions and the rationale behind the agreement must be recorded and placed on the alleged offender's hard copy file. Such records are to include, as a minimum, the place, date, and time of the negotiations, the name of

the person with whom negotiations were held, whether negotiations were held face to face or otherwise, the arguments put forth by the alleged offender or the mitigating circumstances presented in the case and, most importantly, the RME's reasons for reducing the penalty.

(12) An agreement must not be conclusive until the payment of fine is rendered or the suspension has been served. Where agreement is reached by telephone, a cheque or the document can be given to the local police by the alleged offender and signing of the waiver can be handled by FAX or by other suitable arrangement. The RME is responsible for making the appropriate arrangements with the local police.

(13) A Revised Notice of Assessment of Monetary Penalty must only be issued when the amount as agreed in the informal meeting is paid in full. If the 12 month limitation action period has passed, the revised notice is still issued but must refer to the original notice and include the date(s) of the original notice. The original notice must have been issued within the 12 month period. Based on the current date, a revised payment date for the monetary penalty should be added to the revised notice. *(See Appendix E of this SI for a sample Revised Notice of Assessment of Monetary Penalty form)*. In the case of a suspension, the original notice of assessment of a suspension remains in effect until the suspension is served. Once the suspension has been served as agreed in the informal meeting, the Canadian Aviation Document is returned with a letter advising the alleged offender that the suspension has been served (specifying the dates if different from the original notice) in complete satisfaction of the penalty assessed and that no further proceedings under Part I of the *Act* will be taken against him in respect of the contravention(s).

11.0 JUDICIAL ACTION

11.1 Introduction

(1) Judicial action refers to the prosecution of a person in the criminal courts for the alleged contravention of any of the few provisions of the *Act* or the CARs that have not been designated. Although the *Act* is essentially a regulatory statute, a limited number of offences have been created for serious matters or deliberate violations. These offences are prosecuted in accordance with the procedural provisions of the *Criminal Code*. Judicial action is available only for the seven hybrid offences under Subsection 7.3(1) of the *Act* and the few non-designated provisions of the CARs.

(2) Judicial jurisdiction refers to the authority of a particular court to hear a charge brought before it. Two factors influence the selection of the appropriate court: the type of proceedings (whether the prosecution is by indictment or by way of summary conviction) and the territorial authority of each court.

(a) Territorial jurisdiction: Generally speaking, where the offence was committed on the ground within Canada, the criminal court having jurisdiction in the territory where the offence was committed may hear the matter.

(b) If the offence was committed in flight inside Canada, it is deemed to have been committed in the province in which the flight commenced, terminated, or over which the aircraft passed. Each provincial court having jurisdiction in the territory where these events occurred may hear the matter. In provinces where the territorial jurisdiction of courts is limited, the problem of establishing the exact territory over which the flight passes dictates that charges not be laid in those provinces unless the flight commenced or terminated in the territorial jurisdiction of a particular court.

(c) Where the offence is committed on board Canadian registered aircraft operating over the high seas or any territory outside Canada, any provincial court may hear the matter with jurisdiction in the territory where the alleged offender is found, as if the contravention had been committed in that place; and

(d) Choosing a court: Choosing a court in which to lay any information depends on which court has jurisdiction and where evidence and witnesses are located. This is done by the RME in consultation with The Public Prosecution Service of Canada (PPSC). Prior to his plea being accepted by the court, the alleged offender may request that the matter be heard near the place where his or her witnesses reside. The court may grant this. Any court may, of its own accord, direct that a matter be heard before another court having jurisdiction.

11.2 Purpose and Objective

(1) The purpose of a trial is to determine whether the prosecution has proved that the accused is guilty of the offence charged. The Crown must present before the court all the credible evidence considered to be relevant to an alleged offence. The accused is presumed to be innocent and therefore is not obligated to prove anything. The onus is on the Crown to prove otherwise. Each essential element of the offence must be proved by the Crown beyond a reasonable doubt.

(2) The objective of prosecution, therefore, is not to obtain a conviction but to ensure that where criminal conduct is alleged and severe sanctions are contemplated, an accused is accorded the full protection of a trial before a judge or judge and jury. Crown counsel appears as a representative of the Minister of Justice whose responsibility is to ensure that justice is done. The Crown must not hold back evidence that may be unfavorable to the case and should only offer evidence that is properly admissible. In argument, the Crown should avoid appeal to passion, misstatement of facts or expression of opinion.

11.3 Designated Provisions

(1) Judicial action cannot be taken where a person contravenes a provision that has been designated under Section 103.08 of the CARs, the *Designated Provisions Regulations*. Provisions so designated are enforceable only by the imposition of an administrative monetary penalty or the suspension or cancellation of an appropriate Canadian Aviation Document. The ban on prosecution in respect of designated provisions is found in Subsection 7.6(2) of the *Act*.

11.4 Non-designated Provisions

(1) Where a person contravenes a provision that has not been designated, the RME must determine whether to take administrative action or to initiate judicial action. Judicial action should be considered where administrative suspension has been or is likely to be ineffective, or where the alleged offender is not a Canadian Aviation Document holder. The criteria in the next paragraph will assist the RME in evaluating the likely effectiveness of a particular deterrent action. These criteria are to be considered in all cases where judicial action is contemplated.

11.5 Criteria for Use of Judicial Action

(1) The Public Prosecution Service of Canada (PPSC) is responsible for considering all the information relating to the case and may exercise its prosecutorial discretion to decide on a course of action that differs from the recommendation provided by Transport Canada. In such cases, the RME is to advise the Chief Enforcement.

(a) Judicial action is appropriate where the alleged offender does not hold a Canadian Aviation Document and willfully does any act or thing in respect of which such a document is required.

(b) Judicial action can be initiated instead of a suspension where the alleged offender has committed one of the hybrid offences or a non-designated offence.

(2) In the case of a hybrid offence, if a decision by the RME is made to recommend judicial action, the RME will consider summary conviction first unless the circumstances surrounding the offence dictate that a procedure by way of indictment is more appropriate. This decision will take place only after careful consideration of the following factors:

(a) The subjective seriousness of the offence;

(b) The previous judicial history of the accused;

(c) The penalty likely to be given;

(d) The frequency of the offence in the community and the need for dissuasion; and

(e) Whether it would be in the public interest to have a trial by jury.

(3) Where, based on the above criteria the RME would normally recommend to proceed summarily but the limitation period for a summary proceeding has expired, the RME should not recommend proceeding by indictment unless:

(a) The accused contributed significantly to the delay;

(b) The investigation was conducted with due diligence but it continued beyond the limitation period because of the complexity of the case;

(c) The particular circumstances of the offence did not come to light until shortly before or at some time after the limitation period expired and the offence is very serious; and

(d) Public interest otherwise warrants prosecuting.

(4) All rationale for the decision must be well documented in EMS.

11.6 Liaison with Department of Justice / Attorney General

(1) Legal advice on the case should be obtained by the RME from the PPSC regional office. The RME is to be the formal liaison office with PPSC and must keep them informed of all essential developments in the case as they occur. An effort should be made to develop good rapport with the Crown counsel to foster a consultative process. PPSC has made it clear that once a case is turned over to Crown counsel, it becomes their responsibility. Communication with a TCCA office is strictly at the discretion of Crown counsel.

11.7 Types of Offences

(1) The *Act* contains provisions which create two types of offences for which judicial action may be taken:

(a) Summary conviction offences; and

(b) Hybrid or dual procedure offences.

(2) The two differ in the procedure used to prosecute an alleged offender and in the maximum potential sentences if convicted. *(See Appendix B of this SI for a chart showing the allowable sanctions)*.

11.7.1 Summary Conviction Offences

(1) Summary conviction offences are established by Subsection 7.3(3) of the *Act* and, upon conviction, may result in a court-imposed fine but not in imprisonment. Under this subsection, all contraventions of the *Act* and of the CARs, which have not been designated, may be prosecuted using the summary conviction procedure. Summary conviction prosecutions are initiated by the laying of information. This means that a person (the informant / inspector) appears before a Justice of the Peace in the Justice's office and swears out the information on oath. The

Information document states that the informant has reasonable and probable grounds to believe that a person (the alleged offender) has, on a stated date and at a stated place, contravened the provisions of a law and did thereby commit an offence. To ensure correct wording, the RME, the PPSC and the RCMP, as appropriate, should agree on the wording of the charges before the information is sworn by the RCMP or the Enforcement investigator.

(2) The Justice of the Peace then prepares a summons which is a document ordering the alleged offender to appear before a provincial court judge at a specified time and place. This document is personally served on the alleged offender by a sheriff or peace officer.

11.7.2 Hybrid or Dual Procedure Offences

(1) The most serious offences are the seven hybrid or dual procedure offences. Found only in Subsection 7.3(1) of the *Act*, these offences, on conviction, may result in a jail sentence. Dual procedure offences are so named because a choice can be made to proceed either summarily or by way of indictment. The RME may initiate prosecutions by way of summary conviction but the RME must obtain approval from the CE before initiating indictment procedures. To initiate a judicial proceeding, the RME must consult a Crown prosecutor and recommend specific judicial action to the prosecutor. The Crown prosecutor is not bound to accept the RME's recommendation and may choose to proceed by indictment or by way of summary conviction or may choose not to proceed at all. The type of proceeding selected should be announced at the beginning of a case. Investigators should ensure that a comprehensive court brief containing complete and accurate information is prepared and delivered to the Crown counsel in order to assist in making a decision.

11.7.3 Criminal Code Offences Relating to Aeronautics

(1) Several sections of the *Criminal Code* address offences related to the operation of aircraft. Appendix D of this SI lists those offences and the process for dealing with each.

11.8 Limitation Period

(1) Section 26 of the *Act* expressly provides a twelve-month limitation period on institution of proceedings under Sections 7.6 through 8.2 of the *Act* or by way of summary conviction. *(See section 9 of this SI for more information)*.

(2) In all cases, when a limitation period is expired, it is not appropriate as indicated in 9.6(2) to assess a suspension as a sanction unless a suspension would have been assessed if the limitation period was not expired.

11.9 Court Procedure

(1) At the time of the first appearance, the accused is informed of the nature of the charge as set out in the information. The procedure which follows varies depending on whether the offence is an indictable offence or a summary conviction offence. The offences set out in paragraphs (a) to (g) of Subsection 7.3(1) of the *Act*, as amended, are hybrid or elective in that they may be proceeded with by way of summary conviction or by way of indictment at the election of the Crown prosecutor. Once the accused has been arraigned and the prosecutor elects to proceed by way of summary conviction, the accused is asked to enter a plea of guilty or not guilty. The accused may request an adjournment to seek legal counsel or to obtain particulars of the alleged offence from the Crown prosecutor. Before a plea is entered, there may be preliminary motions challenging the validity of the information. These are usually of a technical nature.

(2) When a guilty plea is entered, the Crown prosecutor advises the court of the circumstances of the offence and the penalty provided under the legislation. The Crown may also suggest an appropriate sentence after stating the seriousness of this contravention and the history or record

of related contraventions, if any, of the offender. Defense counsel, or the offender, if not represented by counsel, is then permitted to “speak to sentence”.

(3) Prior to entering a guilty plea, defense counsel may approach the Crown prosecutor for the purpose of plea-bargaining. Alternatively, the counsels may agree on a specific sentence to suggest to the court or what facts or criminal record will be read in at sentencing.

(4) This is a common and generally accepted part of the criminal process and Crown counsel and the investigator should discuss what approach might be taken.

(5) If a “not guilty” plea is entered, a date is set for trial, often many months down the road. In the interim period, counsel for both the prosecution and the accused must consider how they will present their case. They may wish to issue subpoenas to witnesses ordering them to appear at the court on the date of trial.

(6) If the Crown prosecutor decides to proceed by way of indictment, the accused must elect the mode of trial in answer to the charge. Depending on the province in which the trial is to be held, the accused may elect one of three possible options on the mode of trial. The accused may elect to be tried by a Magistrate (Provincial Court Judge), or by a Judge (District Court Judge) alone, or by a Judge and Jury.

(7) If the accused elects to be tried by a Magistrate, then a plea to the charge is entered before the Magistrate and the procedure is the same as that set out above for summary conviction offences.

(8) If the accused elects to be tried by a Judge alone, or by a Judge and Jury, then no plea is entered and the Justice holds a preliminary inquiry. The purpose of the preliminary inquiry is to determine if there is enough evidence to proceed to trial. (It is important to remember that a preliminary inquiry is not a trial). A person who is likely to give material evidence may be required by way of subpoena to attend the preliminary inquiry. At the inquiry, the prosecutor calls witnesses and all witnesses are examined under oath before the Justice in the presence of the accused. The accused or counsel for the accused has the right to cross-examine the prosecution witnesses. A record of the evidence of each witness will be taken down by a court reporter. After all the evidence has been presented, the court will make a determination by either discharging the accused if there is insufficient evidence or, if the evidence is sufficient, by committing the accused for trial. If the court has any doubt, then it must commit for trial.

(9) On the day of the trial, the charge is read and a “not guilty” plea is entered, if this has not already been done. The Crown prosecutor then calls evidence to establish each and every element in the information. This is usually done through the testimony of witnesses, but may be done through documents where legislation provides for it. Each witness is subject to cross-examination by the defense. When the Crown prosecutor finishes re-examination, the case for the Crown is complete.

(10) Defense counsel may then bring a motion to have the Crown’s case struck out by way of no evidence or insufficient evidence. If the defense is successful, the charge is dismissed. The defense may, however, call witnesses including the accused, even though the accused is not obligated to provide evidence. All witnesses are subject to cross-examination by the Crown prosecutor.

(11) If the defense does call evidence, it must present final argument first as to why the alleged offender should be found not guilty. If no defense evidence is called, the Crown prosecutor must argue first and state why a finding of guilty should follow upon the evidence that was heard.

(12) The procedure differs slightly where there is a jury trial in that each counsel addresses the jury and the trial judge gives the jury direction in what is known as a charge to the jury prior to its retiring for deliberation.

(13) The judge or jury as the case may be will then make a finding of guilty or not guilty. This may be done immediately, or at a later time as is the case when the judge reserves decision.

11.10 Defenses

(1) In either judicial or administrative proceedings under the *Act*, certain defenses are available to an alleged offender. The defenses of due diligence, necessity, and officially induced error are the possible options available to the alleged offender.

11.11 Sentencing

(1) In speaking to sentence, Crown counsel may require the testimony of witnesses in advising the court of the gravity of the offence and the related infraction history of the accused.

(2) The court may impose imprisonment, a fine, or both as provided in the *Act*. As mentioned above, the offences listed in Subsection 7.3(1) of the *Act* may be preceded with either by way of indictment or by way of summary conviction. The maximum sentence for an individual convicted of a summary conviction offence found in Subsection 7.3(1) of the *Act* is imprisonment for 1 year or a maximum fine of $5000 or both a fine and imprisonment in accordance with Subsection 7.3(4) of the *Act*. All other offences under the *Act* or the CARs, except those designated are summary conviction offences carrying a maximum sentence for an individual of $5,000 in accordance with Subsection 7.3(4) of the *Act*. *(See Appendix B of this SI for a depiction of maximum sanctions)*.

(3) There are three sentencing matters introduced in the current legislation which deserve mention:

(a) Subsection 7.3(6) of the *Act* provides for a minimum fine of $250.00 upon conviction of a second or subsequent offence;

(b) Subsection 7.5(1) of the *Act* provides that a court may, in addition to any other punishment it may impose, make an order prohibiting the person from exercising the privileges of their Canadian Aviation Document for a period of time specified in the order; or make an order prohibiting the person from operating an aircraft or providing services essential to the operation of an aircraft for a period of time specified in the order. This applies to both summary conviction and indictable offences; and

(c) Subsection 7.4(1) of the *Act* provides that when a person is convicted on indictment of the offences referred to in paragraphs 7.3(1)(f) or (g) of the *Act* (willfully acting without the required document or willfully acting while a document is suspended or an order of prohibition is in effect) in relation to the operation of a commercial air service, the court may order the forfeiture of any aircraft used in that service. This provision is intended to give courts the power to terminate the operations of illegal commercial air services where appropriate.

(4) Since 1972, there have been provisions in the *Criminal Code* for conditional or absolute discharges where the offender has pleaded or is found guilty. This may only be done when it is in the best interest of the offender and is not contrary to the public interest.

(a) According to the Criminal Code, where the offender is discharged before the court, the offender is deemed not to have been convicted of the offence. A conditional discharge is a discharge that does not come into effect until a period of probation has expired. If the person is convicted of a subsequent offence within this period, the discharge may be revoked and a sentence may be imposed for the original offence. An absolute discharge permanently concludes the matter.

11.12 Stay of Proceedings

(1) At any time after criminal proceedings are commenced and before judgment, Crown counsel may direct the clerk of the court to make an entry on the record that the proceedings are stayed. In the case of a prosecution under the *Act*, the proceedings may then be recommenced, without laying new information, at any time before the expiration of the limitation period or within one year after

the entry of the stay of proceedings, whichever time is the earlier pursuant to the *Criminal Code*. It is generally accepted that the limitation period referred to in the preceding sentence is the 12 month limitation on action period stipulated by Section 26 of the *Act*.

12.0 SANCTIONS

(1) This section provides guidance to the Enforcement staff in the selection of an appropriate sanction

12.1 General

(1) Enforcement responses should normally escalate in severity to achieve appropriate results according to applicable legislative and regulatory provisions and approved decision-making processes. The enforcement approach shall consider the level of assessed risk (Likelihood and Impact). Where there is potential for serious or irreversible harm, the enforcement measure will be swift, decisive and may immediately trigger the full extent of the Minister's authorities. (RDIMS 8952191, p5)

(2) The table of sanctions shown below in figure 12-1, delineates a matrix of appropriate sanctions for violations of designated provisions, and is to be used as a guideline by an Enforcement investigator when recommending a sanction and by the RME when imposing one. Notwithstanding these sanction levels, each case must be judged on its own merits and every sanction must be justified in accordance with the procedures laid out in this SI. In addition, it is important to document the justification for any recommended or assessed penalty. The documentation can provide for procedural fairness in the event of disclosure prior to an informal meeting or Tribunal review. In addition to any other records where such justification is documented, it should be included in the case comments fields of EMS in order that it is included in an EMS generated case report. The maximum administrative monetary penalty for contravention of any specific regulatory provision is designated in the CARs Schedule II, Part I Subpart 3. The Schedule has established three basic maximum penalty levels. Each regulatory provision has been assigned one of these levels based on the relative seriousness or safety impact that would be incurred in the event of a violation.

(3) In accordance with the Enforcement policy of fairness and firmness, a progressive approach to sanction determination has been developed. As it relates to the imposition of an administrative monetary penalty, this approach consists of the assessment of a fraction of the maximum designated penalty that is established in Schedule II for both first and second violation of a designated provision, and assessment of the maximum for a third and subsequent violation.

(4) The sanction matrix in this SI was developed by establishing a first offence level at 20% of the maximum monetary amount for a violation of a designated provision that carries the highest level of penalty, and at 25% for the medium or low-level penalties established in Schedule II. Second offence levels are set at 50% of the maximum, and third and subsequent offence penalty levels are set at the Schedule II maximums. In addition, all penalty levels respect the 1:5 ratios between individual and corporation monetary penalties established in the *Act*.

(5) The matrix also contains recommended Canadian Aviation Document suspension times in the event that an administrative Canadian Aviation Document suspension is chosen as the most appropriate sanction. EMS contains a complete list of all designated provisions, and is updated as expeditiously as possible following publication of revisions in *Canada Gazette II*. The sanction table for each specific designated provision is appended to their specific charge "Details" page in EMS.

(6) No penalty levels are established for non-designated provisions, as these must be dealt with through summary conviction, or in the case of violations of the prohibitions specified in Section

7.3(1) of the *Act*, may also be indictable. In any case, administrative monetary penalties are not an option, so are not specified.

(7) The following factors are also to be considered when recommending or assessing a sanction:

(a) The sanction may be moderated in light of mitigating circumstances, (events which were inadvertently caused by misunderstanding, misconception or an honest mistake). It is recommended that the sanction not be reduced more than 30%.

(b) The sanction may be enhanced in consideration of the deliberateness, significant gravity of the offence, or other factor that indicates the contravention is worthy of a higher-than-recommended penalty.

(c) A second or subsequent offence is considered to take place when the record of a previous similar but not necessarily identical offence remains on the offender's EMS file. The second or subsequent offence does not have to be a contravention of the same section of the CARs as the previous offence or offences in order to be considered similar. Generally, if a previous offence occurred more than two years prior to the current offence, the previous offence will not be considered when determining a sanction.

(d) Sanctions for all subsequent contraventions should be raised from previous sanctions except where limited by the maximum amount allowed by regulation.

Fig. 12-1 – Tables of Sanctions

CAR 103.08(2) MAXIMUM PENALTY	RECOMMENDED SANCTION INDIVIDUAL / CORPORATION		
INDIVIDUAL / CORPORATION	FIRST OFFENCE	SECONDE OFFENCE	SUBSEQUENT OFFENCE
$5,000 / $25,000	14 DAYS $1,000 / $5,000	35 DAYS $2,500 / $12,500	70 DAYS $5,000 / $25,000
$3,000 / $15,000	10 DAYS $750 / $3,750	20 DAYS $1,500 / $7,500	40 DAYS $3,000 / $15,000
$1,000 / $5,000	3 DAYS $250 / $1,250	6 DAYS $500 / $2,500	12 DAYS $1,000 / $5,000

7.3 – OFFENCES	RECOMMENDED SANCTION INDIVIDUAL / CORPORATION		
INDIVIDUAL / CORPORATION	FIRST OFFENCE	INDIVIDUAL / CORPORATION	FIRST OFFENCE
SUSPENSION (DAYS)	30	60	120 or MORE

12.2 Factors Affecting the Choice of Sanction

(1) The facts surrounding the commission of the offence:

(a) What was the role of the offender?

(b) Was there any pressure or undue influence exerted by an employer or an employee?

(c) Were there mitigating circumstances not amounting to a defense?

(2) The gravity of the offence:

(a) Was safety compromised?

(b) Was there any actual harm done?

(c) Did the violation result in an incident or accident?

(d) Was there careless or reckless conduct?

(e) What is the maximum punishment available?

(3) The premeditation or deliberateness of the offence and attitude of the offender:

(a) While “the mental element” is not relevant to guilt in strict liability offenses it may be indicative of the offender’s attitude;

(b) Was recklessness involved or plain negligence?

(c) What is the offender’s attitude toward safety?

(d) What is the offender’s attitude toward future compliance?

(4) Personal characteristics to be considered – what is the offender’s:

(a) Age (young offender?);

(b) Experience level, knowledge and skill in aeronautics;

(c) Training record;

(d) Employment – is a licence required to hold employment;

(e) Work in relation to any Canadian Aviation Documents; and

(f) Financial position in regard to the ability to pay a fine or penalty.

(5) The record of the offender:

(a) Are there any prior sanctions on record?

(b) Is this an isolated act or is this person a repeat offender?

(c) Are there any related or similar offences on record?

(d) Is there any question of competence or qualification involved?

(6) Punishment:

(a) What is the range of sanctions available?

(7) Deterrence and public safety:

(a) Would the recommended sanction contribute to public safety?

(b) Will the sanction act as deterrent to others?

(8) Rehabilitation:

(a) Will the sanction promote future compliance on the part of the offender?

12.3 Canadian Aviation Regulations Non-Designated Offences

(1) There are a number of provisions in the CARs that are not designated. This is typically the case when a provision is prescribing or proscribing certain actions on behalf of persons not directly engaged in aviation related activity, such as passengers or airport workers. In these cases, contraventions will have to be addressed through summary conviction proceedings.

13.0 RECORDS MANAGEMENT

13.1 Removal of Notation of Sanction

13.1.1 General

(1) Section 8.3 of the *Act*, establishes that a person may request that the Minister remove from the person's file, any notation of a suspension by the Minister of a Canadian Aviation Document, or of a penalty imposed in accordance with sections 7.6 to 8.2. of the *Act*.

(2) Removal of a notation of sanction means destroying the Enforcement file that refers to the record of a suspension or administrative monetary penalty that was served/paid in respect of a contravention of the *Act* or the CARs. As well as the destruction of Enforcement file, removal of notation of sanction means destruction of all other documents referring to the suspension/monetary penalty, from any other record held by the Minister.

(3) In the case of electronic records held in EMS, the record must be de-identified by deleting all information in the case file that could identify the person making the application. This includes the person's name, address, phone number, employer, aircraft registration, personnel file number or any other information that could link the person to the investigation or commission of the contravention. Tombstone data contained in EMS such as: the date of the contravention, regulation related to the contravention, and type of penalty, will remain in the EMS for statistical purposes. In the case of other electronic records or databases such as Distributed Air Personnel Licensing System (DAPLS) or the Aircraft Maintenance Engineer System (AMES), the record of the contravention is to be removed by deleting any reference to the contravention or the suspension/monetary penalty.

13.1.2 Criteria for Removal of Notation of Sanction

(1) The *Act* specifies that a notation of a suspension or monetary penalty must, on request from the person affected by the suspension or monetary penalty, be removed from the person's record held by the Minister if:

- (a) At least two years have transpired since the date the suspension expired or the penalty amount was paid;
- (b) No additional suspension or penalty has been recorded against that person after that date; and
- (c) In the opinion of the Minister, the removal of the record would not be contrary to the interest of aviation safety or security

13.1.3 Removal of Other Records

(1) Other Enforcement records that pertain to preliminary reviews or investigations that did not result in the imposition of a penalty, such as preliminary reviews concluded with NIC and investigations concluded with NFA, must be retained for two years in accordance with the requirements of the *Privacy Act*. These records may, however, be removed earlier than two years with the consent, or

at the request of the individual to whom the record pertains. Otherwise, records must be disposed of two years following case closure.

Note:

Records that relate to summary convictions or indictments are not subject to the record procedures stipulated in Section 8.3 of the Act. In the case of records related to summary conviction or indictment, the record removal procedures in Section 13.2 of this SI are to be used.

13.1.4 Denial of Application for Removal of Notation of Sanction

(1) As indicated in Subsection 13.1.2 of this SI, the Minister may deny an application for removal of a notation of sanction, if the removal from the record would not be in the interest of aviation safety or security. In accordance with Subsection 8.3(4) of the *Act*, no further application for record removal may be considered within two years of the previous application, in the event that the Minister denies an application for removal of notation of sanction.

(2) Any decision to deny the removal of a notation of sanction based on interest of aviation safety or security must be made by the Chief Enforcement (CE) on behalf of the Minister.

13.1.5 Process for Removal of Notation of Sanction

(1) The RME is to confirm the identity of the applicant before starting the process for Removal of Notation of sanction. This can be done by obtaining the name, address and phone number, date of birth and license number of the applicant along with the particulars of the contravention that led to the Notation of Sanction.

(2) The RME is to examine the application to determine if it meets the criteria for removal of notation of sanction specified in Subsection 13.1.2(1)(a) and (b) of this SI respecting the time elapsed since the penalty paid or suspension served date, and subsequent contraventions. If the application does not meet these criteria, the RME may respond to the applicant directly, stating that the applicant does not meet the criteria for record removal at this time, and identifying the reason the applicant's record is not eligible for removal. Such a notice should be in the form of a notification sent by certified or registered mail within 30 days of receiving the request from the applicant. As stated in Subsection 13.1.4 of this SI, only the CE is to make the decision to deny the removal of a notation based on the interest of aviation safety or security. In Visser vs Canada dated February 22, 2011, the Tribunal was of the opinion that the discretion conferred by Subsection 8.3(1) of the *Act* does not authorize the Minister to suspend review of an Applicant's file if a suspension or penalty could potentially be recorded in respect of the Applicant at a later date.

(3) Where the RME determines that the application meets the above-mentioned criteria, a written confirmation to that effect, must be forwarded to the CE for further review within 30 days of receiving the request from the applicant. In respect of any other information that may be pertinent to the interests of aviation safety or security, and which is related to the application, the RME should also forward any recommendation regarding the potential denial of the application.

(4) The CE is to review the applicant's EMS file to confirm the determination of the RME, and that the applicant meets the criteria identified in Subsection 13.1.2 of this SI respecting the interests of aviation safety and security. The CE must consider the enforcement record or other pertinent record of the applicant that relates to an assessment of the applicant's safety record, as well as the merits of any ongoing investigations into contraventions allegedly committed by the applicant, in the determination on whether the interests of aviation safety or security are appropriately served by record removal and destruction.

(5) Where the CE is of the opinion that the removal is not contrary to the interests of aviation safety or security, the CE must direct that the applicant's regional and Head Quarters enforcement files

be destroyed, and that any notation of sanction in any other record be removed and destroyed. Specifically, in addition to the 5504 series file, the 5802, 5008 and 5258 series files, including any associated electronic or database type records, and including any file data sheets, must be checked. Any references or cross-references with respect to any notation of sanction against that person must be removed from these records.

(6) Upon receipt of direction from the CE, the RME must destroy the applicant's regional enforcement file and is to remove and destroy any notation of sanction from any other regional record, specifically those files referred to in paragraph 13.1.5(4) of this SI. Once the record destruction is complete, the RME must notify the CE.

Note:

In the case where the contravention was committed in a region other than where the request for a removal of sanction originated from, the CE will contact the RME where the contravention was committed by email, to enquire if there are any concerns regarding the request. The RME from that region should reply to the CE within 10 days.

If the CE has approved the removal of sanction, the RME where the contravention was committed will authorize Records Management in that region to destroy the file.

Once the file is destroyed, Records Management where the contravention was committed will advise the RME for that region. That RME must then notify by email, the CE and the manager of the region where the request originated from, that the file has been destroyed.

(7) Following notification that destruction of the applicable regional records has been completed, the CE is to de-identify the EMS record and destroy all copies of the correspondence with the applicant. For the purposes of de-identification, it is only necessary to delete information contained in fields that are searchable using the EMS search tool, not including any dates.

(8) Following the destruction and de-identification of all records related to the application, the CE, on behalf of the Minister, must notify the applicant by registered mail that the notation of sanction has been removed. The notification is to be sent to the applicant within 30 days of receiving the request from the regional office.

(9) Where the CE is of the opinion that the removal of the record is contrary to the interests of aviation safety or security, the CE must notify the applicant by registered mail, stating the reasons for the decision. The notification should include information related to the applicant's right to a review of the decision in accordance with Section 7.1(3) to (8) and Section 7.2 of the *Act*, and indicate to the applicant that where such a review is desired, the applicant must make the request to the TATC within 30 days of receipt of the notification. The CE is to send a copy of the notification to the RME for inclusion in the applicant's regional file.

13.2 Pardons – Custody of Records

(1) The *Criminal Records Act* requires that records related to summary convictions or indictments, for which a pardon has been issued or granted, are subject to specific storage and disclosure rules *(ref. Section 6. and 6.2 of the Criminal Records Act).* Where a regional Enforcement office has been notified in writing by the Solicitor General that a pardon has been granted or issued to an individual pursuant to Section 4.1 of the *Criminal Records Act,* for a summary conviction or indictment related to a contravention of the *Act*, or an aeronautics related offence under the *Criminal Code*, the following procedure are to be used:

(a) The RME must retrieve all regional enforcement records related to the pardon, and forward them, along with the notification from the Solicitor General, to the CE in a sealed double envelope marked "confidential;"

(b) Following reception of the records, Headquarters are to de-identify the EMS record;

(c) While in the custody of Enforcement Headquarters the hard copy records are to be kept separate and apart from other enforcement records in a secure filing cabinet;

(d) Where the RME subsequently receives a request for disclosure of records that are the subject of a pardon, the RME is to forward the request to the CE; and

(e) Records related to pardoned convictions must only be disclosed in accordance with the conditions specified in the *Criminal Records Act*.

13.3 Retention and disposition of Enforcement Records

13.3.1 General

(1) Notwithstanding that the *Privacy Act* applies to records relating to individuals, all Enforcement case files are considered to be subject to the requirements of the *Privacy Act* since they may contain personal information related to individuals implicated in the contravention. Therefore, with the exception of cases concluded with oral counselling, all records and files that pertain to a case are to be retained for a period of at least two years. The Enforcement office that makes the determination in a case must be the office that retains the case file. Transfer of a file must be coordinated with the information/records management group within the region that is currently holding the record.

13.3.2 Systematic Destruction of Enforcement Files

(1) This process applies to:

(a) All enforcement files concluded NIC;

(b) All enforcement files concluded NFA (other than oral counselling);

(c) All enforcement files concluded with assessment of an administrative penalty, which have not already been deleted following a request for removal of notation of penalty (ref. 8.3 of the *Act*); and

(d) All enforcement files concluded with a summary conviction or indictment.

(2) All enforcement files, whether or not they were the subject of a comprehensive investigation, but not including files related to cases concluded with oral counselling, or files related to investigations that resulted in the imposition of a penalty, are to be retained for a period of two years. Following two years, the enforcement files will be systematically destroyed, and the related EMS files de-identified.

(3) Notwithstanding the systematic destruction at two years, files that are ***not*** related to investigations concluded with the imposition of an administrative penalty, or summary conviction or indictment (NIC or NFA files), may be destroyed/de-identified upon a request from the person to whom the file pertains.

(4) Enforcement files that were the subject of a comprehensive investigation, and which resulted in the imposition of an administrative penalty or a penalty imposed following a summary conviction or indictment are to be retained for a period of 10 years. Ten years following the date that the penalty was paid/served, the files will be systematically destroyed, and EMS records de-identified. Refer to Figure 13-1 retention of Records Matrix Summary Note.

13.3.3 Destruction of Enforcement Files concluded with “Oral Counselling”

(1) Enforcement records relating to a case that is closed with oral counselling as the final result are to be deleted or destroyed as soon as practicable after the case is closed. Due to the record retention requirements of the *Privacy Act,* no case should be concluded with oral counselling unless the offender consents to the deletion of the record prior to the two-year retention period

required by the *Privacy Act*. All hard copy files related to the investigation must be destroyed by the region upon closing the file. Headquarters will routinely and automatically de-identify EMS case records closed by oral counselling.

13.3.4 Procedure for Systematically Destroying Files

(1) Enforcement Headquarters staff is to review EMS case files on a regular basis to identify and list case files that are eligible for destruction. The CE is to review and amend the list as necessary before forwarding it to the appropriate RME with instructions that the case files listed be destroyed. RMEs having reservations regarding the case files in question may make their concerns known to the CE who is to make the final determination.

13.4 Transmission of Protected Files

(1) When electronic files containing Protected B information are transmitted through e-mail, Public Key Infrastructure (PKI) encryption must be used.

13.5 Storage of Documents in Records Document and Information Management System (RDIMS)

(1) Civil Aviation Directive (CAD) 40 requires that RDIMS be used to manage departmental documentation. Guidance material related to the storage and classification of government documents can be found on the TCCA RDIMS Website (http://mytc.tc.gc.ca/rdims-dm-2179.html). This guidance material establishes that documented information compiled and identifiable as part of an investigation (of a specific person or entity) into a possible violation of law, is considered to be Protected B or higher, and is not to be stored in RDIMS.

(2) Notwithstanding departmental policy regarding document storage in RDIMS, and for ease and efficiency of information storage and retrieval, all documents (letters, e-mails, notices, etc) that are created or acquired in the course of an investigation are to be handled and stored as Protected B information. Such documents, regardless of whether they contain information that could be classified as Protected B, are not to be stored in RDIMS, and must be retained with other investigation case file documentation.

(3) All other documentation created or authored by Enforcement personnel, such as functional advice or training material, which does not refer to possible contraventions of the law by an identified person or entity, does not contain information that could lead to the identification of a detection source or witness, and does not contain any other information that would be classified as Protected B or higher, must be stored in RDIMS.

Fig. 13.1 – Retention of Records Matrix Summary

Method of File Conclusion	Less than two (2) years	After two (2) years	After ten (10) years (See Note)
NFA, NIC (including Penalty Assessment cases overturned by the TATC)	Upon written request, destroy hard copy files and ask Headquarters to de-identify EMS files	Systematically	N/A
Penalty assessed and paid / served	N/A	a) On request, destroy hard copy files and ask Headquarters to de-identify EMS files	Systematically

		provided that criteria in Section 8.3(1) of the *Act* are met b) If criteria are not met, files subject to review every two (2) years upon re-application	
Oral Counselling – Comprehensive Investigation	Destroy hard copy files and ask Headquarters to de-identify EMS files as soon as practicable after case closure	N/A	N/A

Note:

After a 10 year retention period the Enforcement electronic file on a person consisting of an administrative penalty is to be de-identified and the corresponding hard copy file held by the region is to be destroyed as long as the last 5 years of the 10 year period are free of any violations.

14.0 MISCELLANEOUS

14.1 Enforcement Minimum Equipment

(1) It is the responsibility of the RME to ensure that Regional Enforcement Inspectors have possession of, or access to, the necessary documents and materials in order to perform their duties as Enforcement Inspectors. A number of the documents are available on CD-ROM and/or via the Intranet.

14.2 Transportation Appeal Tribunal of Canada / Court Requirements

(1) When required to appear at the TATC or in court, inspectors should ensure that the procedures established by Advisory and Appeals Division are followed. Contact the Chief, Advisories and Appeals for further guidance.

14.3 Field Requirements

(1) When in the field, Enforcement Investigators should have the following items available:

(a) A copy of the *Act* and a copy of the CARs;

(b) Their inspector credentials card;

(c) An airport airside authorization pass;

(d) A supply of bilingual business cards (Name; “Investigator, Enforcement”; Business Address; Telephone number; E-mail address; Facsimile number);

(e) A bound notebook with numbered pages (Inspector Notebook);

(f) A still or movie camera with ample film, data card or cassettes, batteries and a means of photo illumination;

(g) A small tape recorder, with ample batteries and tape or digital recorder;

(h) A temporary aircraft journey log book; available as MSWord file from Enforcement Headquarters Dec 98;

(i) A flashlight (preferably spark-proof);

(j) A four to six power magnifying glass;

(k) A tape measure (25-ft. recommended);

(l) A supply of Detection Notice forms (Form# 26-0471);

(m) A Notice of Detention of Aircraft form (Form# 26-0365);

(n) A Notice of Suspension for an Immediate Threat to Aviation Safety form (# 26 0367);

(o) Statement forms for witnesses and alleged offenders;

(p) A receipt book; and

(q) Highly visible protective clothing / vest for wear on airside of aerodrome.

15.0 INFORMATION MANAGEMENT

(1) Most information collected and documented through the process explained in this SI is managed through EMS. All information is classified “Protected B” when collected and must not be made public in any way.

16.0 DOCUMENT HISTORY

(1) SI 103-001, **Issue 01**, RDIMS 5993913(E), RDIMS 5537742(F), 2013-12-20 – *Aviation Enforcement Procedures.*

(2) Aviation Enforcement Procedures, Fourth Edition, RDIMS 1002469(E), 1002649(F), dated December 2003.

17.0 CONTACT OFFICE

(1) For more information, please contact the:

Chief, Enforcement, Standards Branch (AARTE)

Phone: 613-990-1188

Email: jean-françois.mathieu@tc.gc.ca

(2) Suggestions for amendment to this document are invited, and should be submitted via: services@tc.gc.ca

Original signed by Robert Sincennes

Robert Sincennes

Director, Standards Branch,

Civil Aviation

Transport Canada

APPENDIX A — CASE REPORT

Introduction

(1) A case report is an abridged relation of the facts of a case drawn up by the investigator for use by the RME. It is inserted as the first section of a case file. The case report provides a method of systematically compiling and summarizing all information pertinent to the case so that the RME can quickly become as familiar and conversant with the case as possible without the need to review in detail the complete contents of the file. After reading the case report, the RME should have a sufficient understanding of the case to be able to determine with confidence the appropriateness of the action recommended by the investigator. The case report also serves as a checklist for the investigator to ensure that all necessary investigative steps have been completed and nothing further remains to be done. It must be as accurate and comprehensive as possible.

Content and Preparation of Case Reports

(1) The cover sheet of the case report should contain the identity of the alleged offender by name and licence number, if appropriate, as well as the alleged contraventions and the name of the investigator. This should be followed by a case synopsis, which could be described as a thumbnail sketch of the case, providing the RME with a quick overview of the situation. Next is a sheet fully identifying the alleged offender by name, address and date of birth, and setting out licensing details and details of the aircraft involved. An analysis of legislation follows breaking down the alleged contraventions into their elements, listing the facts to be established and identifying the evidence to be used to prove those facts. A list of evidence which may be entered as exhibits if the case were to progress to the TATC should be followed by the exhibits, e.g. copies of statements, diagrams, photographs and Secretary's Certificates. The exhibits should be flagged with a letter to ensure quick and easy location. Originals of the items can be placed in the case report. If applicable, the alleged offender's enforcement history is indicated next. The package is rounded off with the inspector's recommendation in which any mitigating or aggravating circumstances may be outlined based on section 12.2 of this SI. While preparing a case report demands much work, a case cannot be expediently concluded without a properly prepared case report. In some instances, many man-hours may have been expended in investigating the offence. A successful and thorough investigation should not be jeopardized by the use of a poorly prepared or inadequate case report. An example case report follows.

Note: A sample case report can be found in RDIMS 6534467.

APPENDIX B – TABLE OF JUDICIAL AND ADMINISTRATIVE ACTION

	CLASS OF OFFENCE			
	Designated Provisions	*Non-Designated Provisions*		
Optional *Actions*	Oral Counselling			
	Administrative Suspension of Canadian Aviation Document			
		Summary Conviction Offences	Hybrid Offences *AA s.7.3(1)*	
Proceedings	Administrative	Court Prosecution	Court Prosecution	
		By Way of Summary Conviction	By Way of Summary Conviction	By Indictment
Punishment Individuals	Maximum Monetary Penalty $5,000	Maximum Fine $5,000 No Imprisonment Prohibition	Maximum Fine $5,000 Imprisonment up to one year Prohibition	No Maximum Fine Imprisonment up to five years Prohibition
Corporations	Maximum Monetary Penalty $25,000	Maximum Fine $25,000 Prohibition	Maximum Fine $25,000 Prohibition	No Maximum Fine Prohibition
Commercial Air Services	[Wilful misuse of documents – paragraphs 7.3(1) (f) (g)] on indictment			Forfeiture
Recourse	Review by TATC Appeal to a Federal Court	Appeal to a Higher Court	Appeal to a Higher Court	Appeal to a Higher Court

APPENDIX C – CONTACT INFORMATION

Provincial Departments of Justice

Region	Address
Atlantic Region (MAP)	Department of Justice – Atlantic Regional Office Director, Civil Litigation and Advisory Section 5251 Duke St. Suite 1400 Halifax, Nova Scotia B3J 1P3 Tel: (902) 426-8006, Fax: (902) 426-2329
Quebec Region (NAP)	Department of Justice – Québec Regional Office Direction du droit commercial / Commercial Law Directorate Bureau régional du Québec / Quebec Regional Office Complexe Guy Favreau 200 René-Lévesque O., Tour Est, 5ième étage Montréal, Québec H2Z 1X4 Tel: 514-496-4073 or 514-283-8777 (secretary) Fax: 514-283-3856
Ontario Region (PAP)	Department of Justice Headquarters Director General and Senior General Counsel Justice Canada, Civil Litigation Section BOC – Floor: 11 – Room: 1101 Bank of Canada Building 234 Wellington Street East Tower Ottawa, Ontario K1A 0H8 Telephone: (613) 957-4865, Fax: (613) 954-1920
Prairie and Northern Region (RAWP)	Department of Justice –Prairie Regional Office Director and General Counsel Civil Litigation and Advisory Services 211 Bank of Montréal Building 10199 – 101st Street Edmonton, Alberta T5J 3Y4 Telephone: (780) 495-2978, Fax: (780) 495-6300
Pacific Region (TAP)	Department of Justice – Pacific Regional Office Director, Business and Regulatory Law Portfolio Robson Court 900 – 840 Howe Street Vancouver, British Columbia V6Z 2S9

	Telephone: (604) 775-7502, Fax: (604) 775-5942

Enforcement Offices

Region	Contact	Address	Telephone	Fax
Headquarters	Chief, Enforcement	Transport Canada, Place de Ville, Tower C 330 Sparks Street, 4th floor, Area A Ottawa, ON K1A 0N8	(613) 990-1188	(613)990-7038
Headquarters	Chief, Advisory and Appeals	Transport Canada, Place de Ville, Tower C 330 Sparks Street, 5th floor, Area C Ottawa, ON K1A 0N8	(613) 990-1218	(613) 990-1198
Pacific Region	Regional Manager, Enforcement	Transport Canada 800 Burrard Street, Room 620 Vancouver, BC V6Z 2J8	(604) 666-5668	(604) 666-3982
Prairie and Northern Region	Regional Manager, Enforcement	344 Edmonton St., 3rd Floor P.O. Box 8550 Winnipeg, MB R3C 0P6	(204) 983-6945	(204) 983-6987
Edmonton Area	Regional Superintendent, Enforcement	Canada Place 1100-9700 Jasper Avenue Edmonton, AB T5J 4E6	(780) 495-3479	(780) 495-5378

Ontario Region	Regional Manager, Enforcement	Transport Canada Pearson Transport Canada Centre 5431 Flightline Drive Mississauga, Ontario L5P 1A1	(905) 676-4657	(905) 405-3305
Thunder Bay Area	Enforcement Inspector	Thunder Bay Transport Canada Centre 100 Princess Street, Suite 210 Thunder Bay, ON P7E 6S2	(807) 474-2577	(807) 475-5816
Quebec Region	Regional Manager, Enforcement	Transports Canada 700, rue Leigh Capreol Dorval, PQ H4Y 1G7	(514) 633-3533	(514) 633-3666
Atlantic Region	Regional Manager, Enforcement	Transport Canada P.O. Box 42 Heritage Court 95 Foundry Street, 6th Floor Moncton, NB E1C 8K6	(506) 851-6736	(506) 851-2527
Canadian Air Traffic Movement A record of most airport-to-airport movements of aircraft in Canada is available from NAV CANADA which collects the information through the NAV CANADA Aircraft Movements System (NCAMS). Request the	Peter Friedrichs friedrp@navcanada.ca Manager, Service Appraisal – Decision Support, Finance	NAV CANADA 77 Metcalfe Street, 9th Floor Ottawa, ON K1P 5L6		(613) 563-5882

information using the format attached as appendices to the NAV CANADA / Transport Canada Procedural Protocol.				
Canadian Forces	Attention: A3 Combat Readiness /DICP	1 Canadian Air Division Headquarters Box 17000, Station Forces Winnipeg, MB R3J 3Y5	(204) 833-2500 ext. 5512 or ext. 5012	(204) 833-2604
Federal Aviation Authority – Headquarters	Manager, Special Program Branch Regulations and Enforcement Division Office of the Chief Counsel Department of Transportation Federal Aviation Administration	800 Independence Avenue Washington, DC 20591 U.S.A.	(202) 267-3137	(202) 267-5106
United States Airmen and Certificated Information	Attention: AVN 460 http://registry.faa.gov	Airman Certification Branch, AAC-260 Federal Aviation Administration P.O. Box 25082 Oklahoma City, Oklahoma 73125	(405) 954-3261	(405) 954-4105
Owners of United Stated Registered Aircraft	http://registry.faa.gov	Aircraft Registration Branch, AAC-450 Federal Aviation Administration	(405) 954-3116	(405) 954-3548

		P.O. Box 25504 Oklahoma City, Oklahoma 73125		
Transportation Appeal Tribunal of Canada	Registrar	Transportation Appeal Tribunal of Canada 333 Laurier Ave W, Room 1201 Ottawa, ON K1A 0N5	(613) 990-6906	(613) 990-9153

Aviation Links

Reverse lookup of telephone numbers:

http://www.infospace.com/info/reverse_ca.html

Worldwide aviation information including links to international aircraft registrations:

www.landings.com

APPENDIX D – CRIMINAL CODE OFFENCES RELATED TO AIRCRAFT AND TO UNRULY PASSENGERS

(1) s. 2. “Peace officer” « Agent de la paix »

a) “Peace officer” includes (f) the pilot-in-command of an aircraft.

(2) s.7. Offences committed on aircraft

a) Establishes Canadian jurisdiction over flights on Canadian registered a/c, over flights terminating in Canada;

b) Establishes Canadian jurisdiction re: hostage taking as above and if hostage taker is Canadian or resident, the act was committed to induce Her Majesty to commit any act, the hostage is Canadian, offender is present in Canada after the commission of the offence; and

c) AG must consent to proceedings if accused not Canadian.

(3) s. 25. Protection of persons acting under authority

a) Allows use of necessary force by peace officer in exercise of duty.

(4) s. 27. Use of force to prevent commission of offence

a) Allows use of necessary force to prevent commission of offence.

(5) s. 30. Preventing breach of peace

a) Allows interference to prevent breach of peace.

(6) s. 31. Arrest for breach of peace

a) Peace officer or one who assists peace officer can arrest for breach of peace.

(7) s. 34. Self-defence against unprovoked assault

a) Anyone assaulted can use force to defend.

(8) s. 35. Self-defence (in cases of aggression)

a) Allows use of force for self defence.

(9) s. 52(1) – Sabotage

a) Indictable;

b) See also: s. 52(2)(definition) - s. 55 - s. 581(4).

(10) s. 76. – Hijacking Aircraft

a) Indictable (life); and

b) See also: s. 230 (causing death) - s. 231(5) (1st degree murder).

(11) s. 77. Endangering safety of aircraft or airport

a) Act of violence against person that is likely to endanger safety of aircraft – indictable (life).

(12) s. 78(1) – Offensive Weapons and Explosive Substances on Board a Civil Aircraft

a) Indictable; and

b) See also: s. 78(2) (definition of civil aircraft)

(13) s. 78. Offensive weapons and explosive substances

a) Offensive weapon or explosive on aircraft – indictable (not > 14 years).

(14) s. 89. Carrying concealed weapon

a) Concealed weapon – hybrid – indictable (not > 5 years); summary.

(15) s. 90. Possession of prohibited weapon

a) Possession of prohibited weapon – hybrid – indictable (not > 10 years); summary.

(16) s. 129. Offences relating to public or peace officer

(a) Resisting or wilfully obstructing police officer in performance of duty – hybrid – indictable (not > 2 years); summary.

(17) s. 175. Causing disturbance, indecent exhibition, loitering, etc.

a) In a public place by fighting, screaming, swearing singing or using obscene or insulting language, by being drunk, by impeding other persons – summary.

(18) s. 178. Offensive volatile substance

a) Throwing volatile substance including stink bombs – summary.

(19) s. 180. Common nuisance

a) Nuisance endangering lives, safety or health of public – indictable (not > 2 years).

(20) s. 219. Criminal Negligence

a) Definition – shows wanton or reckless disregard for lives or safety of other persons.

(21) s. 220(2) – Causing Death by Criminal Negligence

a) Indictable (life).

(22) s. 221 – Causing Bodily Harm by Criminal Negligence

a) Indictable (not > 10 years).

(23) s. 248. Interfering with transportation facilities

a) with intent to endanger safety of any person, places, or does, anything to property used in connection with transportation that is likely to cause death or bodily harm – indictable (life).

(24) s. 248 – Interfering with Transportation Facilities

a) Indictable.

(25) s. 249(1)(c) – Dangerous Operation of Aircraft

a) Indictable or summary conviction.

(26) s. 249(3) – Dangerous Operation of Aircraft Causing Bodily Harm

a) Indictable.

(27) s. 249(4) – Dangerous Operation of Aircraft Causing Death

a) Indictable.

(28) s. 251(1)(b) – Unsafe Aircraft

a) Indictable; and

b) See also: s. 251(2)(b) and (3).

(29) s. 252(1) – Failure to Stop at Scene of Accident

a) Indictable; and

b) See also: s. 252(2).

(30) s. 253 – Operating While Impaired

a) Indictable or summary conviction; and

b) See also: s. 254(3) and (4) - s. 255 - s. 258(1)(a) - s. 259.

(31) s. 259(4) – Disqualified from Operating Aircraft

a) Indictable or summary conviction.

(32) s. 264. Uttering threats

a) Utters, conveys or causes person to receive a threat to cause death or bodily harm – hybrid – indictable (not > 5 years); summary (not > 18 months).

(33) s. 265. Assault

a) Definition – applies force directly or indirectly, attempts or threatens to apply force.

(34) s. 266. Assault

a) Hybrid – indictable (not > 5 years); summary.

(35) s. 267. Assault with a weapon or causing bodily harm

a) Use of weapon or causing bodily harm while committing assault – hybrid – indictable (not > ten years); summary (not >18 months).

(36) s. 268. Aggravated assault

a) Wounds, maims disfigures, or endangers life of complainant – indictable (not >14 years).

(37) s. 269. Unlawfully causing bodily harm

a) Causing bodily harm to any person – hybrid – indictable (not > 10 years); summary (not > 18 months).

(38) s. 270. Assaulting a Peace Officer

a) Peace or person acting in aid of peace officer – hybrid – indictable (not > 5 years); summary.

(39) s. 279. Hostage taking

a) Confines, imprisons, forcibly detains – indictable (life).

(40) s. 348(1) and (2) – Breaking and Entering

a) Indictable; and

b) s. 348(3) includes aircraft here.

(41) s. 393(3) – Fraud in Obtaining Transportation

a) Summary conviction.

(42) s. 430. Mischief

a) Destroys, damages, obstructs, interferes with operation of property;

b) Mischief causing actual danger to life – indictable (life); and

c) Mischief in relation to property having value > $1000.00 – indictable (not > 10 years); summary.

(43) Other Related Sections

a) s. 7(3)(b);

b) s. 7(3.l)(b);

c) s. 7(3.7)(b);

d) s. 7(8) – Definition of aircraft deemed in service;

e) s. 7(9) – Definition of aircraft deemed to be in flight;

f) s. 214 – Definition of Aircraft;

g) s. 259(1) – Mandatory Order of Prohibition; and

h) s. 476 – Jurisdiction Definition

APPENDIX E – SAMPLE LETTERS, NOTICES AND FORMS

Introduction

It is recommended that wording of letters sent to document holders be as close to the sample wording as possible. In a 1994 court case, the judge compared wording used in a letter to a document holder with that suggested in the previous Enforcement Procedures Manual and commented somewhat unfavourably on the lack of adherence to departmental procedures.

Electronic Forms and Documents

Most of the forms used by the Enforcement Division are available in digital "FormFlow" format on the Intranet through the "Forms" selection on the TCCA home page. These forms can be completed then printed out or can be printed and then completed manually. Data entered on most forms can be stored electronically.

E-forms, like paper forms, come under the control of Forms Management for several reasons including standardization, currency, compliance with Government policies/requirements and avoidance of duplication. Forms Management stocks fewer paper forms, normally prints only on demand and incurs a cost per unit that is higher for small quantities. With respect to form samples shown in this Appendix, refer to the "Forms Catalogue" or contact Enforcement Headquarters for current status.

Note: In EMS, when using the letter or report generators which extract information stored in the EMS databank, the wording of the resultant letter usually must be amended to ensure factual and grammatical accuracy.

Document Title	Reference
Sample "Letter of Investigation – Domestic"	6530178
Sample "Letter of Investigation – Foreign"	6530190
Sample "Letter of Investigation – FAA"	6530197
Sample "Letter to Foreign Agency – Case Referral"	6530201
Sample "No Further Action" Letter	6530217
Sample "No Further Action – No Violation" Letter	6530223
Sample "Letter to Detection Source – Initial"	6530242
Sample "Letter to Detection Source – Follow-up"	6530288
Sample "Informal Meeting Notice"	6530318
Sample Note Included with a Notice of Suspension for Failure to Pay a Debt to the Minister	6530341
Sample "Waiver" Form	6530365
Sample "Transfer of Possession" Form	6530373
Sample Information to Obtain a Search Warrant	6530384
Sample Search Warrant	6530400
Sample Ramp Check Form	Aircraft – Form # 26-0535E

Document Title	Reference
	Ultralight Aircraft – Form # 26-0536E
Sample “Statement” Form – Witness	6530411
Sample “Statement After Warning” Form	6530417
Sample “Warning to Alleged Offender”	6530440
Sample Request for Secretary’s Certificate	Form # 26-0602
Sample “Notice of Suspension” – Punitive	Form # 26-0358
Sample “Notice of Assessment of Monetary Penalty”	Form # 26-0360
Sample “Revision to Notice of Assessment of Monetary Penalty”	Form # 26-0361
Sample ‘’Notice of Suspension for Non-Payment of Monetary Penalty	Form # 26-0695
Sample “Detention Notice”	Form # 26-0365
Sample “Notice of Suspension For an Immediate Threat To Aviation Safety”	Form # 26-0367
Sample “Detection Notice”	Form # 26-0471
Sample Temporary Aircraft Journey Log	Form # 26-0603
Sample “Request for Journey and Technical Logs” Letter	6530452
Sample “Suspended CAD – Retention by RCMP” Letter	6530459
Sample “Suspended CAD – Return to CAD Holder” Letter	6530469
Sample “Request for ATS Data” Letter	6530482
Sample “Return to Service of Secured Tapes or Files” Letter	6530508
Sample “Request for Aircraft Movement Data” Letter	6530532
Sample “Last Request for Voluntary Payment” Letter	6530537
Sample “Request for Certificate Issuance” Letter	6530544
Sample Letter of SMS Notification of Contravention (to enterprise manager)	6530553
Debt Payment Deferral Agreement Following a Request for a Transportation Appeal Tribunal of Canada Review or Appeal	6530569
Withdrawal of a Request for Review Filed Before the Transportation Appeal Tribunal of Canada (TATC)	6530585
Withdrawal of a Request for Appeal Filed Before the Transportation Appeal Tribunal of Canada (TATC)	6530613
Debt Payment Deferral Agreement Prior to a Request for a Transportation Appeal Tribunal of Canada Review or Appeal	6530633
Priority Level Criteria for Comprehensive Investigations	9244762
Investigation Quality Control Criteria	10174260
Investigation Quality Control Checklist	10174291

APPENDIX F – INVESTIGATOR'S INVESTIGATION CHECKLIST

ENFORCEMENT

INSPECTOR'S INVESTIGATION CHECKLIST

INDEX	CHECKED	INVESTIGATION PROCESS	AEPM	DATE
	❑	Initial Complaint or Report of a Possible Violation		
	❑	Initial Letter to Detection Source		
		Contravention by: _____		
		❑ Aircrew		
		❑ Canadian Aviation Company / Crew		
		❑ In Canada	7.6	
		❑ Abroad	7.5	
		❑ Over High Seas	7.5.1 7.10	
		❑ Foreign Civil Aircraft / Crew	7.3	
		❑ In Canada		
		❑ Over High Seas	7.2	
		❑ NAV CANADA / Personnel		
		❑ Young Offenders		
		❑ Military Aircraft / Crew		
		❑ Other		
	❑	Identify the Alleged Offender / Aircraft		
		❑ Aircrew ID		
		❑ Aircraft Registration		
		❑ Licenses / Ratings		
		❑ Corporation Company – Operating Certificate Number		
	❑	Identify Possible Violations	5.3	
		_____		
		_____		
		_____		
		_____		
		❑ Designated Provision		
		❑ Summary Conviction and Hybrid		
		❑ *Criminal Code* Offences Relating to Aeronautics		
		❑ Dangerous Goods Regulations		
		_____		

❑ Limitation Period 9.6

❑ Offender's Files

- ❑ EMS (Enforcement Management System)
- ❑ DAPLS (Distributed Air Personnel Licensing System)
- ❑ NACIS (National Aviation Company Information System)
- ❑ CCARCS (Canadian Civil Aircraft Register Computer System)
- ❑ CAIS (Computerized Airworthiness Information System)
- ❑ Others

❑ Evidence collect

- ❑ Pilot ID
- ❑ Journey Log
- ❑ Others _____

❑ Air Traffic Service Recordings 6.15

- ❑ Voice Tape (Real Time)
- ❑ Voice Tape (Condensed)
- ❑ Communication Transcript
- ❑ Radar Tape (DFR)
- ❑ Radar Data (RDA)
- ❑ Data Strip
- ❑ Log Entry
- ❑ Flight Plan

❑ Interviewing 6.22

- ❑ Witnesses
- ❑ Witness Statement Form
- ❑ Offender
- ❑ Warned Statement Form

❑ Letter of Investigation

❑ Search Warrants 6.20

Coordination with TC Functional Branches / Police

Recommendation to Supervisor

Deterrent Action 9.0

- ❑ No Investigation Conducted
- ❑ No Further Action
- ❑ Notice of Assessment of Monetary Penalty (26-0360)
- ❑ Notice of Suspension (26-0358)
- ❑ Prosecution

❑ Referred to: _____

_____	❑	INFORMAL MEETING	10.9.3	_____
_____	❑	CAD / Money received		_____
_____	❑	Transportation Appeal Tribunal of Canada		_____
		❑ Notified within 15 days (AA 7.8(2))		
		❑ Decision received		

CLOSING

_____	❑	Closing Letter	❑ Detection Source ❑ Offender ❑ Foreign Agency	_____
_____	❑	Tape released Evidence returned CAD returned _____		_____
	❑	Case report printed Clear from Word E-mail _____		
	❑	Case Closed and File Archived		_____

APPENDIX G – EVIDENCE CONTINUITY FORM

CHAIN OF EVIDENCE CUSTODY FORM
FORMULAIRE DE CHAINE DE POSSESSION

Page 1 of ___

FILE NO: NO DOSSIER:	EXHIBIT DESCRIPTION: DESCRIPTION DE LA PIÈCE :

SEIZURE DETAILS – DÉTAILS DE LA SAISIE

DATE (YA/MM/DJ)	DETAILS OF ACTIONS TAKEN DÉTAILS DES ACTIONS PRISES	SEIZURE LOCATION ENDROIT DE LA SAISIE	STORAGE LOCATION ENDROIT DU REMISAGE	PERSON WHO SEIZED THE EXHIBIT PERSONNE QUI A EFFECTUÉ LA SAISIE	SIGNATURE

FOLLOW-UP DETAILS – DÉTAILS DU SUIVI

Nº	DATE (YA/MM/DJ)	DETAILS OF ACTIONS TAKEN DÉTAILS DES ACTIONS PRISES	STORAGE LOCATION ENDROIT DU REMISAGE	NAME/NOM & SIGNATURE
1.				
2.				
3.				