Legal obligations of aircraft engineers and maintenance providers (Part 2)

In this edition of *The Legal Lounge* I conclude my two part series on the legal obligations of aircraft engineers and maintenance providers, focusing on two recent Australian court decisions.

Australian civil aviation regulations and other legal requirements

The Australian Civil Aviation Act (CAA) and Regulations (CAR) 1988 grant similar statutory powers to the Civil Aviation Safety Authority (CASA) to issue, suspend, vary or cancel licences, as those granted to the Director of Civil Aviation in New Zealand. In exercising their powers, CASA must regard the safety of air navigation as the most important consideration (s9 CAA).

Under CAR 269(c), CASA may cancel, vary or suspend a licence, certificate or authority, if the holder "has failed in his or her duty with respect to any matter affecting the safe navigation or operation of an aircraft"; or under CAR 269(d), if a person is "not a fit and proper person to have the responsibilities and exercise and perform the functions and duties of a holder of such licence or certificate or an authority". The FPP test is not as prescriptively defined as in the New Zealand legislation, but in practice it is interpreted and applied broadly consistently in both countries.

Aircraft engineers and maintenance providers could also face civil or criminal legal action if the standard of care of maintenance work is considered to be inadequate or negligent.

Australian court decisions involving aircraft engineers and maintenance providers

Robertson v Civil Aviation Safety Authority [2010] AATA 788

Mr Robertson is a licensed aircraft maintenance engineer (LAME) with over forty years of experience. Until late 2007 or early 2008 he was also Chief Engineer, and held a Certificate of Approval (CoA) under the Australian CARs to carry out work on aircraft, on behalf of his maintenance organisation. As a CoA holder, he was required to supervise and certify for work carried out by other engineers, including work completed by LAMEs on behalf of the organisation.

In November 2008 Mr Robertson was issued with a "show cause notice" (similar in some respects to the s11 proposed adverse decision process in New Zealand), regarding maintenance work completed between September 2006 – May 2007 on a Cessna aircraft which had been brought in to his maintenance facility on three occasions. It subsequently transpired that the work on the first job (completed between September 2006 to January 2007) had been seriously substandard, and should not have been released to service. The aircraft had conducted 100 hours of air transport passenger flights before being brought in for its second inspection in March 2007, and again for a further 100hr inspection in May 2007. The defects had not been picked up or rectified during the subsequent two inspections, and the aircraft eventually sustained damage due to the defective work. On inspection by other LAMEs, the aircraft was determined to be un-airworthy, and a special flight permit was obtained to enable the aircraft to be flown to a new facility for remedial work to be carried out.

After investigating this matter, CASA determined that Mr Robertson was not a fit and proper person to exercise the full responsibilities and duties associated with holding an AMEL. CASA accordingly placed an endorsement on his licence, *"limited to work performed by the licence holder under the control of a Certificate of Approval Holder and prohibited from certifying for completion of maintenance in relation to work performed by some other person".*

Mr Robertson appealed against this endorsement to the Administrative Appeals Tribunal, arguing that it was disproportionate and unnecessary. It is not noted in the Tribunal decision, but seems apparent, that his CoA was either revoked without challenge, or voluntarily surrendered.

Mr Robertson did not dispute a report produced by a CASA inspector which clearly demonstrated that the work performed on the initial job was poorly done and inadequate. However, as this work was certified by a LAME who worked on the job, Mr Robertson argued he was not responsible for it and should not have to shoulder the responsibility for the inadequate work of the LAME. He argued that he was on-sight at all times if the LAME had required his assistance, and that the LAME had never sought any. He argued that he had hired an appropriate professional and should be entitled to rely on his certification of the work. He therefore viewed the endorsement on his licence as harsh.

However, the Tribunal noted that Mr Robertson was aware that the LAME who completed the work on the first job had never previously done the type of inspections required on the aircraft, and prior to this had only ever worked on helicopters. Mr Robertson had also actively coordinated the job, which was substantial, and took several months to complete. The Tribunal agreed with CASA that as the Chief Engineer and holder of the CoA, he had ultimate responsibility for the work; and that he had not adequately supervised and ensured that the LAME had correctly completed and certified each stage and category of the work undertaken. Mr Robertson had also directly worked on the third job on that aircraft (which included a 100hr inspection), and as the only LAME working on that job, had himself certified the aircraft for release to service.

The Tribunal accepted the CASA inspector's evidence that, had Mr Robertson inspected the first job prior to it being released to service, some of the deficiencies would have been noticeable to the naked eye and thus immediately detectable. The inspector was further troubled that the deficiencies in the initial job were not detected in the course of the subsequent two inspections, including the last one which Mr Robertson had personally certified. The Tribunal also noted that Mr Robertson had a previous infraction in 2000, which had resulted in a variation of his AMEL for a period of six months, relating to failures to abide by the CARs, some of which concerned non-compliance with certification of maintenance requirements.

The Tribunal was satisfied in the circumstances that CASA was correct to determine Mr Robertson was not a fit and proper person to exercise the full responsibilities and duties associated with holding an AMEL, and did not consider the response to be disproportionate. Accordingly, it upheld the endorsement placed on his licence by CASA. The Tribunal also noted CASA's attitude that the conditions and limitations on his licence need not remain in place indefinitely, and that they may be removed at a future time, subject to a period of monitoring and compliance.

St Clair v Aircraft Technicians of Australia Pty Ltd, and Timtalla Pty Ltd (2010 – 2012).

On 21 June 1994 Mr St Clair was flying a Robinson R22 helicopter leased by his business, to Alice Springs from a cattle station where he had been mustering cattle. His wife was a passenger in the aircraft. En route he descended from a height of about 700 feet to about 100 feet to check on the condition of some cattle he had observed in an unexpected location. He commenced to climb back to the cruising altitude of 700 feet, but at 200 feet the helicopter lost power and crashed. Both occupants were seriously injured, with Mr St Clair being left an incomplete paraplegic.

It was common ground at trial and on appeal that the immediate cause of the helicopter losing power was the failure of "the upper actuator bearing" which was part of the mechanism which transmitted power from the engine to the rotating shaft to which was attached the rotary wings of the helicopter. When the bearing failed, no rotational force could be applied to the shaft, thereby depriving the wings of velocity and lift. The bearing was not the correct part for the aircraft, and it was accepted by the trial judge that this had caused or substantially contributed to the accident.

Mr St Clair had taken the helicopter to Aircraft Technicians of Australia Pty Ltd for a 100hr inspection in July 1993, during which time the upper actuator bearing had been removed and cleaned by the employee who carried out the inspection. However, the employee either failed to detect that it was the incorrect part, and/or failed to replace it with a Robinson approved bearing. The trial Judge held that this amounted to a breach of the standard of care required in carrying out this work, and the company was held liable for the negligence of its employee. Mr St Clair was awarded $1.7million in damages. On appeal, the award was increased to $2.3million in damages.

Mr St Clair was not successful in his further claim against Timtalla Pty Ltd, which owned the aircraft. A wholly owned subsidiary of Timtalla, Choppercare Pty Ltd, had been responsible for maintaining the aircraft and had first leased it out to Mr St Claire's company in 1992. It was Choppercare that had installed the incorrect part. That company was subsequently sold to Aircraft Technicians Australia Pty Ltd, prior to the accident. The trial Judge held that Timtalla did not owe a non-delegable duty to Mr St Clair to ensure the safety of the helicopter for the work carried out by its former subsidiary company, and rejected his separate claims against Timtalla as the parent company. That part of the decision was upheld on appeal.

It should be noted that the legal threshold for evidence in civil cases is a lower standard of proof of "the balance of probabilities", and that it is not necessary to establish gross negligence in order to establish a civil claim. Readers in New Zealand should also be aware that the ability to sue for damages for injury caused by accidents in New Zealand is generally excluded by operation of the national Accident Compensation Scheme.

Concluding comment

Both of these cases and the New Zealand case covered in the March edition of *The Legal Lounge* demonstrate the extent to which maintenance providers can be held legally responsible for substandard maintenance work carried out by aircraft maintenance engineers, even including work carried out by LAMEs, under their control. This could include administrative, civil or criminal legal action taken by a regulatory body, private individuals, or the police.

In the next edition of *The Legal Lounge,* I will review the outcome of the long awaited medical decision concerning Ian Andrews, and the wider implications regarding the effectiveness and adequacy of the medical review and appeal mechanisms currently available in New Zealand.

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