



# LEGAL EASE

## AVIATION LAW MADE SIMPLE

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## Can the AEA Help Keep You Out of Jail?

**C**ould you be convicted of manslaughter because of your maintenance practices?

It happened in New Zealand.

A jury in New Zealand found two men involved in the maintenance of a Robinson R22 helicopter — John Horrell and Ronald Potts — guilty of manslaughter when a tail component failed and the helicopter crashed, killing Phillip Heney. The accident occurred in August 2005.

The prosecution claimed the work on the helicopter was improperly supervised. Witnesses for the prosecution said the Robinson R22 crashed when an incorrectly assembled flange connecting the tail rotor driveshaft failed. They said the defendants failed to ensure work on the helicopter was directly supervised by a licensed aircraft maintenance engineer and inspected twice by qualified engineers.

Horrell's counsel, Philip Morgan QC, said it was not up to Horrell to tell a licensed engineer when to inspect maintenance work; it was up to the engineer and the person doing the work. He claimed Horrell had a process in place to ensure unlicensed engineers were supervised, but could not be expected to judge if the supervision was adequate.

The legal defense was inadequate.

A "guilty" decision was handed

down March 13, 2008, and the pair was sentenced on May 2, 2008. Horrell and Potts were each sentenced to 300 hours of community service. Horrell was ordered to pay \$25,000 and Potts was ordered to pay \$10,000 in compensation to the victim's family.

Could this prosecution and conviction signal the possibility of criminal charges in the future for aviation technicians around the world?

**For a quality-assurance system to keep up with the changes in the industry, someone from the company needs to keep abreast of the changes.**

This was not the first time criminal charges have been leveled against mechanics who have made mistakes. In recent years, there has been increased dialogue about using the criminal laws to punish maintenance providers who are perceived to have engaged in malfeasance.

In the United States, there are sufficient laws to impose far harsher penalties for maintenance-related malfeasance, and there is a likelihood penalties would be more stringent than those of the recent New Zealand case.

In the U.S., manslaughter is defined to include a death caused by recklessness or criminal negligence. If a mechanic violates a regulation, this is often considered "negligence per se" under the civil laws and could

reflect "misdemeanor manslaughter" under the criminal laws. In the case of "misdemeanor manslaughter," it is only necessary to show the offense occurred; it is generally not necessary to demonstrate any separate intent to commit a crime.

State laws vary, but all states have potentially harsh penalties for manslaughter. In New York, for example, first-degree manslaughter is a Class

B felony and carries a maximum sentence of 25 years in prison.

While most manslaughter prosecutions occur at the state level, it is possible to bring federal criminal charges against a mechanic whose maintenance results in an accident or a death.

After a 1992 accident involving an agricultural aircraft was blamed on a part installed by a repair station, the repair station owner was charged with violating the air piracy laws. The air piracy laws make it illegal to endanger the safety of an aircraft by making the aircraft or any part of the aircraft "unworkable or unusable or hazardous." A conviction under this law could have carried the death sentence.

Ultimately, the physical evidence showed the government's theory of the

case was impossible, and the case was dropped. However, during investigation, unrelated record-keeping problems were discovered, and the repair station was fined for those issues.

The aviation-related criminal laws, which include the ambiguously worded air piracy laws and the aircraft parts fraud rule, all include an additional provision stating, if someone is convicted of any crime among the aviation-related criminal laws and the criminal offense resulted in the death of any person, the defendant could receive either the death penalty or life in prison.

There are good strategies for avoiding culpability. The most obvious is to perform high-quality work. But to do this consistently, it is important to have processes in place to support the type of high-quality work that keeps customers coming back.

Two important strategies for maintaining such processes are:

- Having a quality-assurance system in place to help ensure compliance.
- Maintaining a regular practice of obtaining education to ensure you are keeping current on the latest changes in the FAA's regulations and industry practices.

### **Quality-Assurance Regulation**

As many will remember, the FAA had proposed a quality-assurance regulation for Part 145. It was part of the major overhaul of the Part 145 regulations, but it was dropped because of adverse comments.

The FAA re-proposed an amended quality-assurance program when it issued the ratings notice of proposed rulemaking, but the proposed rule is inconsistent with many of the ideas floating around the industry concerning safety management systems.

The Internal Civil Aviation Organization has asked all member nations to implement regulations requiring SMS systems for mainte-

nance organizations (repair stations). As a consequence, it is likely the quality-assurance rule for repair stations will either have to be withdrawn or reissued as a supplemental notice with significant changes.

However, just because the FAA has not yet mandated quality assurance for repair stations, it does not mean there is no benefit to be gained from quality assurance. Many repair stations have found a robust quality-assurance program helps them remain in compliance with the regulations. It also provides the tools and metrics to gauge their continued regulatory compliance.

In the aviation industry, the rules, the practices and the technologies are changing constantly. This means a robust quality-assurance system must be able to identify the relevant regulations as they exist today, and it should be able to ensure continued compliance with the rules. It must be able to identify new practices and implement them to improve efficiency and safety. And it must keep up with new technologies, which lead to new products and new paradigms for business and maintenance.

For a quality-assurance system to keep up with the changes in the industry, someone from the company needs to keep abreast of the changes. For avionics shops, the AEA always strives to fill the role of educational provider.

The AEA's annual convention, its regional meetings and its educational products continue to provide the avionics community with resources it needs to remain compliant and successful.

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