

## Chapter 05 Analysis of Legislative Provisions

### 5.1 Introduction

This chapter 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. Investigators will complete an analysis of each provision which has been contravened for each case where a comprehensive investigation is conducted.

### 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 type of standard or policy. Some enabling provisions in the *Aviation Act* and *CARs* are those which give powers to make regulations, orders and publications. For example: Civil Aviation Regulations, 2002 (Rule 82).
  - (b) Administrative provisions confer a power or impose a duty on the DGCA; 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 DG CAAN can do, their purpose is to provide a statutory basis for administrative procedures or actions. For example: CAR Nepal Civil Aviation Authority Act, 1996 (Section 5).
  - (c) Informative provisions are intended to guide the aviation community and assist individuals in complying with aeronautics legislation. For example: Civil Aviation Regulations, 2002.

Offence creating provisions can be one of two types, first, those which mandate a certain form of conduct and, second, those which prohibit certain act. Non-compliance with these provisions is a violation that can result in judicial or administrative enforcement action. For example: Nepal Civil Aviation Authority Act, 1996 (Section 25).

The legislative provisions of interest in this chapter 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 that 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**

During the early stages of a comprehensive investigation, investigators should list all possible violations, not necessarily in order of importance, and 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**

Analysis for interpretation consists of the following steps:

- (1) Divide the legislative provision into elements, (e.g., (No person) (shall fly) (a helicopter) (on a Sunday).
- (2) Determine the applicability of each element.
- (3) If a meaning is unclear and there are no pertinent regulatory definitions, use dictionary meanings.
- (4) Determine the modifying effect of the qualifying elements.
- (5) Summarize the results to arrive at the interpretation.

## **5.5 Analysis of Offence Creating Legislative Provisions for Evidence**

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.

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.

### **5.5.1 Standard forms of evidence**

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.

### **5.5.2 Special forms of evidence**

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

## **5.6 Sample Analysis**

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

## 5.6.1 Illustrative Analysis of Common Elements

Elements	Facts To Be Established	Evidence
<b>#1</b>  [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.
<b>#2</b>  [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.
<b>#3</b>  [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.
<b>#4</b>  [aircraft] [no aircraft]  -core or qualifying element	The object referred to was an aircraft as defined in <b>FOR</b> of CARs  The aircraft must be identified.	"Standard forms:" Log book, C of R; witness.  C of A / C of R as required by the CARs  -request that certificate indicate status on date of offence
[the pilot-in-command] -defined in <b>FOR</b> of the CARs -usually a core element	The suspected violator was the "pilot-in-command".	"Standard forms:" Log book, witness.
[operate] -core element -not defined in CAR <b>FOR</b>  - "to work or use a machine" (dictionary definition)	The act 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; ATS record

## 5.6.2 Illustrative Analysis of Uncommon Elements

For common elements see the previous page:

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

Uncommon Elements	Facts To Be Established	Evidence
<b>#5</b> [unless a flight authority issued under the CARs is in effect in respect of the aircraft] - qualifying element	<b>(a)</b> no such flight authority has been issued.  <b>(b)</b> if issued, flight authority was not in effect at the time.	For fact (a): use C of A / C of R's Certificate under Rule <b>NCAR</b> of CARs.  For fact (b): show that the standard for a flight authority to be in effect was not met at the time.
<b>#6</b> [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	<b>(a)</b> no such flight authority has been issued.  <b>(b)</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.
<b>#7</b> [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 <b>DG CAAN</b> as required under the CARs.

## 5.6.3 Analysis Matrix – CAR / FOR (Civil Aviation Regulations, 2058 Rule 82 Subpart 6)

### FOR Chapter 3.

No person shall operate an aircraft in flight unless

- a) a flight authority is in effect in respect of the aircraft;
- b) the aircraft is operated in accordance with the conditions set out in the flight authority; and
- c) Subject to subsections (3.1.1) and (3.2.3), the flight authority is carried on board the aircraft.

Elements	Facts To Be Established	Evidence
<b>#1</b> [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.
<b>#2</b> [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
<b>#3</b> [an aircraft] - a common element and a core element - augments the prohibited action	The object referred to was an aircraft as defined in FOR.of the CARs.  The specific aircraft must be identified.	“Standard forms” - Journey log, C of R, eye witness - to identify the particular aircraft.
<b>#4</b> [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. C of A / C of R as required under CARs  - request that certificate indicate status of aircraft on date of offence  b. Documents or expert evidence showing why flight authority was not in effect
<b>#5</b> [and unless the aircraft is operated in accordance with the conditions set out in the flight authority] - an uncommon element and a qualifying element	c. 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
<b>#6</b> [and unless the flight authority is carried on board the aircraft subject to subsection (3.1.1) and (3.2.3)] - a common element and a qualifying element	a. Flight authority was not carried on board the aircraft. b. Show subsections (3.1.1) and (3.2.3) do not apply ( <i>the subsections are not addressed in this example</i> )	Standard forms - eye witness - showing the flight authority was not carried on board the aircraft.