

Federal Court



Cour fédérale

**Date: 20160526**

**Docket: T-1092-15**

**Citation: 2016 FC 583**

**Ottawa, Ontario, May 26, 2016**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**JADE BETHUNE**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is the judicial review of a decision by the Transportation Appeal Tribunal of Canada [TATC] reviewing the decision by the Minister of Transport to refuse to issue a medical certificate to the Respondent. The medical certificate is necessary for the Respondent to apply to become an air traffic controller.

The TATC referred the matter back to the Minister for reconsideration.

## II. Background

[2] The Respondent has a history of mental illness including depression. With the help of his psychiatrist and through trial and error, he found two particular medications that put his depression in remission. Any alteration of this combination has led to regression.

[3] It is difficult not to feel sympathy for Mr. Bethune. He has his heart set on becoming an air traffic controller. In order to do so, he needs a medical certificate as prescribed in the *Canadian Aviation Regulations*, SOR/96-433. It is not necessary to lay out the detailed regulatory scheme in order to understand this matter.

[4] The Respondent underwent a medical examination as part of his application to obtain a Category 2 medical certificate. The certificate is a requirement to begin training as an air traffic controller.

[5] As part of that process, a psychiatrist from the Minister's Aviation Medical Review Board [AMRB] noted that Mr. Bethune was not qualified for the medical certificate because he was an initial applicant taking two psychotropic drugs. Transport Canada did not have adequate information to make a judgment on his illness.

[6] In follow-up communications, the Respondent's doctor provided further information to Transport Canada. Eventually, Transport Canada concluded that Mr. Bethune was unfit because he is under long-term treatment that requires the use of two drugs.

[7] The Respondent asked for and was granted a review by the TATC. The TATC referred the matter back to the Minister for reconsideration.

[8] The TATC Member, having reviewed the evidence, found that more information was needed to assess Mr. Bethune's mental health before accepting or rejecting his medical certification for an air traffic controller position. The Member concluded that psychiatric records of at least five years would give Transport Canada a better basis for a decision. Transport Canada should also provide more medical documentation on possible side effects (if any) of one of the medicines taken by Mr. Bethune.

[9] The Member held that the assessment done by Transport Canada's doctor was an inadequate basis for AMRB assessment. The criterion at issue was whether Mr. Bethune had a "significant mental abnormality" that would render him unable to safely exercise the licence at issue – an air traffic controller licence.

[10] The Minister challenges the TATC decision requiring the Minister to reconsider the matter.

### III. Analysis

[11] It is settled that the standard of review applicable to TATC review decisions of this type is reasonableness (*Canada (Attorney General) v Annon*, 2013 FC 5, 424 FTR 239).

[12] The statutory scheme for aviation approvals, licences and related matters vests a broad discretion in the Minister to act in the interests of public security.

[13] That broad discretion is not absolute. The TATC is a specialized tribunal, with members who have relevant experience, tasked with reviewing decisions such as the one at issue.

[14] This is an instance where the Court must accord great deference to the TATC in acting within its expertise. It was Parliament's intention that the Tribunal act as an oversight on the Minister, and most particularly his officials. There is no issue of the Tribunal usurping Ministerial responsibilities. The decision simply directs the Minister to look at the matter with better evidence.

[15] The TATC carefully reviewed the documentary and oral evidence and found the basis for the Minister's decision to be inadequate.

[16] The Applicant has not been able to show that the TATC's decision fell outside the range of possible, acceptable outcomes defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[17] It was suggested in argument that no new information would change the Minister's decision. I take this as a piece of enthusiastic argument and not as a statement of Ministerial policy. If it were policy, there could be grave consequences to a biased and bad faith reconsideration.

[18] The Applicant has the obligation to reconsider this matter in the context of existing as well as new evidence. The reconsideration will no doubt be conducted properly.

IV. Conclusion

[19] For these reasons, I will dismiss the judicial review with costs in respect of a self-represented litigant.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed with costs in respect of a self-represented litigant.

"Michael L. Phelan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1092-15

**STYLE OF CAUSE:** ATTORNEY GENERAL OF CANADA v JADE BETHUNE

**PLACE OF HEARING:** KELOWNA, BRITISH COLUMBIA

**DATE OF HEARING:** FEBRUARY 25, 2016

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** MAY 26, 2016

**APPEARANCES:**

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Jade Bethune

FOR THE RESPONDENT  
(ON HIS OWN BEHALF)

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FOR THE APPLICANT

N/A

FOR THE RESPONDENT