Date: 20080829

Docket: T-1544-07

Citation: 2008 FC 976

Ottawa, Ontario, the 29th day of August 2008

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

2431-9154 QUÉBEC INC.

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This application, which was filed by the Attorney General of Canada (AGC) acting on behalf of the Minister of Transport (the Minister), is for the judicial review of a first-level determination made on July 24, 2007 by Jean-Marc Fortier, a member of the Transportation Appeal Tribunal of Canada (the Tribunal). Hearing an appeal by 2431-9154 Québec Inc. (Sept-Îles Aviation or the respondent) from the Minister's decision on May 8, 2007 to cancel two operator certificates, a decision made under paragraph 7.1(1)(*c*) of the *Aeronautics Act* (the Act), which gives the Minister the power to cancel an aviation document if "the Minister is of the opinion that the public interest

and . . . the aviation record of the holder of the document or of any principal of the holder . . . warrant it," the Tribunal determined the following:

- under subsection 7.1(7) of the Act, the Minister's decision of May 8, 2007 cancelling flight training unit operator certificate no. 8304 (the certificate or the FTUOC), which had been issued to Sept-Îles Aviation in March 2000, was referred back to the Minister for reconsideration; and

- under subsection 7.1(8) of the Act, the Tribunal stayed the Minister's decision to cancel the certificate until the reconsideration was concluded, since it was satisfied that granting a stay would not constitute a threat to aviation safety.

[2] In my opinion, it is important to specify the limited scope of the certificate cancelled by the Minister. That certificate authorized the respondent to operate a flight training unit (the flight school) to train aircraft pilots; it did not authorize Sept-Îles Aviation to operate a commercial air service for the transportation of passengers or goods. Indeed, Sept-Îles Aviation had operated such a service under another certificate (air operator certificate no. 9260) issued on October 24, 1990, but the Minister cancelled that certificate as well on May 8, 2007, and the Minister's decision to do so was confirmed by Mr. Fortier in a separate determination on October 2, 2007.

[3] The Minister relied on the same 30 grounds to justify this cancellation of both certificates on the same day. In both cases, the Minister made his decision under paragraph 7.1(1)(*c*) of the Act.

The Tribunal, reviewing the two cancellation decisions, held a single hearing at Sept-Îles on May 29 and 30, 2007, at which it received common evidence from the Minister and Sept-Îles Aviation.

[4] I should note as well that, on August 31, 2007, Justice Blais, then of the Federal Court and now a member of the Federal Court of Appeal, dismissed the AGC's application seeking to have the stay of the cancellation of the flight school certificate lifted until this application for judicial review was heard. Justice Blais concluded that there was a serious issue but that the AGC would not suffer irreparable harm if his motion were not granted and that the balance of convenience favoured Sept-Îles Aviation.

[5] I have reproduced the relevant provisions of the Act and the *Transportation Appeal Tribunal of Canada Act* (Tribunal Act) in Schedule A.

[6] The AGC argues that the Tribunal made three errors that justify setting aside the impugned determination:

- His first argument is that the Tribunal erred in refusing to consider all the evidence submitted to it. In support of this argument, the AGC alleges that, rather than examining the record of the certificate holder, Sept-Îles Aviation, and its main principal, Jacques Lévesque, as required by paragraph 7.1(1)(*c*) of the Act, the Tribunal wrongly focused on the record or offences that related solely to the certificate itself. The Tribunal considered only 10 of the 30 grounds relied on by the Minister in cancelling the operator certificate for the school. The AGC therefore

submits that the Tribunal failed to consider all the evidence. The AGC takes this argument further and alleges that treating the cancellation of the two certificates as two separate decisions not only made the Tribunal sever the evidence and fail to consider it as a whole but also led to an absurd result. According to the AGC, it is absurd that Sept-Îles Aviation can now continue operating its flight school under certificate no. 8304, the Minister's cancellation of which was stayed by the Tribunal, but must cease its commercial operations because of the cancellation of certificate no. 8260, which the Tribunal confirmed. In the AGC's opinion, it makes no sense for a company to be required to cease its commercial activities on public interest grounds but at the same time to be authorized to continue training pilots;

- His second ground is that the Tribunal made erroneous findings of fact. According to the AGC, those findings resulted directly from the Tribunal's failure to consider all the evidence. He argues that the Tribunal's finding on the seriousness, frequency and repetition of the offences cannot be reasonable or complete because the Tribunal did not analyse all the evidence;

- Finally, the AGC submits that the Tribunal misinterpreted the burden that must be met to cancel a certificate on public interest grounds. He alleges that the Tribunal erred in substituting its discretion on this point for the Minister's, since its role was only to ensure that the Minister's decision was reasonable, not to itself consider whether the public interest warranted cancelling the certificate.

[7] Counsel for Sept-Îles Aviation raised a preliminary issue. In the opinion of this Court, it was a jurisdictional issue that had to be decided before addressing the issues raised by the AGC.

[8] That preliminary issue was whether the application for judicial review filed by the AGC with this Court was appropriate in light of subsection 7.2(1) of the Act. To decide this issue, the Court had to determine, based on the principles for interpreting bilingual legislation, whether the Act authorized the Minister to appeal a first-level review determination or whether only the person affected by the determination, that is, Sept-Îles Aviation, could do so. If the Minister could appeal the member's first-level determination, the Court had to consider whether the principles laid down in *Abbott Laboratories Ltd. v. M.N.R.*, 2004 FC 140, were satisfied.

[9] The Court therefore decided to hear the parties on the merits but asked them to submit written representations on the preliminary issue to indicate how the Supreme Court of Canada deals with situations in which the English and French versions are contradictory on their face. The written representations were completed on May 1, 2008.

Tribunal's Determination

[10] I will summarize the essential points of the determination.

[11] First, the Tribunal noted that, on May 8, 2007, the two operator certificates that Transport Canada had issued to Sept-Îles Aviation were cancelled by the Minister under paragraph 7.1(1)(*c*) on the same 30 grounds.

[12] Although the Minister's grounds for cancelling the two certificates were the same in both cases, the Tribunal decided to sever or separate the evidence presented at the hearing. The Tribunal divided up the Minister's evidence into two categories: one for air transport operations and the other for the flight school. At paragraph 12 of its determination, the Tribunal clearly stated that, to make a determination on the notice of cancellation of the flight school certificate, it would consider only the evidence, grounds and testimony "concerning the flight training unit operations of Sept-Îles Aviation". At paragraph 13 of its determination, the Tribunal stated that it would "examine the grounds for cancellation numbered 8 to 13, 17, 18, 21 and 22 to make a determination in this case". It determined that the other grounds for cancellation would be "considered by the Tribunal in a separate determination that it will make concerning the notice of cancellation of the AOC of Sept-Îles Aviation".

[13] The Tribunal considered the following grounds for cancellation in the case relating to the cancellation of the flight school operator certificate that Sept-Îles Aviation had held since March 2000:

> **8**. On October 30, 2000 2431-9154 Québec Inc. (Sept-Îles Aviation Enr./Eider Aviation), of which Jacques Lévesque was a principal, did not comply with section 103.03 of the *Canadian Aviation Regulations* following a fourth request for return of old original operator certificates. Mr. Lévesque finally informed Transport Canada that the certificates had been destroyed.
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> **9**. On April 21, 2001, the chief instructor of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr./Eider Aviation), Clément Nadeau, resigned as a result of intimidation by Jacques Lévesque. Mr. Nadeau stated that Mr. Lévesque forged his signature to authorize his students' flights.
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> **10**. On October 5, 2001, the chief instructor of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr./Eider Aviation), Jacques Lévesque, complied with the request for

corrective measures resulting from the inspection of June 15, 2001. These corrective measures had been required since August 27, 2001.

11. On November 1, 2001, 2431-9154 Québec Inc. (Sept-Îles Aviation Enr./Eider Aviation), of which Jacques Lévesque was a principal, did not comply with section 103.03 of the *Canadian Aviation Regulations* following two requests to return the original operator certificate no. 8304.

12. On October 12, 2002, 2431-9154 Québec Inc. (Eider Aviation), of which Jacques Lévesque was a principal, did not comply with sections 606.02(2) and 606.02(5) of the *Canadian Aviation Regulations*. It was assessed with a total penalty of $10 000 (Aviation Enforcement file no. 5504-50955). The penalty was upheld on review, but reduced to $5 000 on appeal (file no. Q-2942-41 of the Transportation Appeal Tribunal of Canada). The operator certificate (OC) was suspended for non-payment then reinstated after payment of the penalty on October 5, 2005. The operator continued operations despite the suspension of its OC, thereby committing a new offence (Aviation Enforcement file no. 5504-60582).

13. On May 21, 2003, as chief instructor, Jacques Lévesque, did not comply with section 406.22 of the *Canadian Aviation Regulations* and was assessed a penalty of $500 (Aviation Enforcement file no. 5504-50956). The decision was reviewed and confirmed by the Transportation Appeal Tribunal of Canada (file no. Q-2939-34).

17. On September 27, 2005, 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.), of which Jacques Lévesque was a principal, did not comply with section 406.03(1) of the *Canadian Aviation Regulations* and was assessed a penalty of $5 000 (Aviation Enforcement file no. 5504-59206). This file was reviewed by the Transportation Appeal Tribunal of Canada on April 23, 2007. Transport Canada is awaiting the determination.

18. On August 24, 2005, 2431-9154 Québec Inc., of which Jacques Lévesque was a principal, did not comply with section 406.03 of the *Canadian Aviation Regulations* and was assessed a penalty of $5 000 (Aviation Enforcement file no. 60582). The penalty was not paid within the time limit and the company is now faced with recovery proceedings by Justice Canada.

21. On December 7, 2006, Transport Canada cancelled Jacques Lévesque's approval as maintenance manager for 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.) because he did not fulfill his duties, which included ensuring safe operations.

22. On December 7, 2006, Transport Canada suspended the flight training unit operator certificate of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.) because the company no longer met maintenance certification requirements. The company no longer had anyone in charge of maintenance and the maintenance control system was no longer in compliance with the requirements of the *Canadian Aviation*

> *Regulations*. The suspension was lifted on February 23, 2007, after the company had met the conditions for reinstatement.

[14] In Schedule 2, I have reproduced the grounds for cancellation relied on by the Minister which the Tribunal did not consider in reviewing the cancellation of the flight school certificate but considered solely in the case involving the cancellation of certificate no. 9260 for the operation of the commercial air service.

[15] After setting out the Minister's grounds that it was going to consider in the case relating to the cancellation of the certificate for the school, the Tribunal summarized the Minister's evidence in support of each of those grounds. Sept-Îles Aviation's evidence was based primarily on the testimony of its president, Jacques Lévesque, and Exhibits R-2 and R-3.

[16] In Chapter VI of its determination, the Tribunal set out its assessment of the evidence in support of the Minister's opinion that the public interest warranted cancelling the certificate owing to the aviation record of the certificate holder and its principal, Mr. Lévesque. The Tribunal stated the following about that evidence:

- It was of the opinion that grounds for cancellation nos. 8 and 11 were administrative in nature and could not alone be used to warrant a notice of cancellation;

- It was not taking ground for cancellation no. 9 into account because no witnesses had been called in support of that ground;

- Ground for cancellation no. 10 was rejected because Mr. Lévesque had indicated to Transport Canada that corrective measures would be taken, the Minister had observed on October 5, 2001 that Sept-Îles Aviation had complied and "[n]o other offence of this nature has taken place since June 2001";

- Ground for cancellation no. 13, although significant, had been the subject of a request for review by the Tribunal, which had confirmed the $500 fine assessed. The Tribunal found that no other offence of this nature had occurred since;

- Ground for cancellation no. 17 could not be considered because it was the subject of a request for review before the Tribunal and it would have been inappropriate for the Tribunal to comment on it or take it into consideration in that review hearing for reasons of natural justice.

[17] The only remaining grounds for cancellation were nos. 12 (flying without the required level of insurance), 18 (suspension for non-payment of penalties) and 21 and 22 (notice of suspension for absence of person responsible for maintenance and non-compliance with maintenance control system). Those grounds related to offences that had occurred in 2002, 2005 and 2006, respectively. The Tribunal determined as follows:

- Grounds for cancellation nos. 12 and 18 had been settled by payment of significant penalties by Sept-Îles Aviation and, although they were serious

grounds, they did not, on their own, warrant the notice of cancellation of the certificate;

- The most serious grounds for cancellation, nos. 21 and 22, gave cause for concern and had led to the Minister's decision to suspend the operator certificate for the school. According to the Tribunal, the notice of suspension of December 7, 2006 was clearly warranted for the reasons stated by the Minister during Guy Dufour's testimony before the Tribunal. According to Member Fortier, Mr. Dufour had thoroughly explained the shortcomings of Sept-Îles Aviation pertaining to the maintenance manager and the maintenance control system. He wrote: "It is obvious that Mr. Lévesque did not meet his obligations as maintenance manager because he did not fulfill his duties to ensure safe operations."

[18] The Tribunal rejected Mr. Lévesque's argument that he had not received any specific training or taken exams to perform the duties of operations manager and maintenance manager. In the Tribunal's opinion, upon accepting the duties of manager, it became Mr. Lévesque's responsibility to ensure that his business met the requirements of the Canadian Aviation Regulations (CARs). To do so, he could not rely on Transport Canada's audits to point out serious shortcomings, especially in terms of maintenance control and meeting the safety standards imposed by the CARs. The Tribunal was of the view that no carrier could operate its business this way and that any holder of an operator certificate issued by the Minister of Transport was responsible for ensuring that the operations and safety standards imposed by the CARs were met at all times.

[19] However, the Tribunal found that another factor had to be considered:

> However, the evidence shows that, between December 7, 2006 and February 23, 2007, the applicant cooperated with Transport Canada and was able to meet all of the conditions for reinstatement of its FTUOC to the satisfaction of the representatives of the Minister of Transport. These conditions were respected until May 22, 2007, date on which the cancellation of the FTUOC came into effect. Between February 23, 2007, when the suspension was lifted, and May 22, 2007, the Minister of Transport did not present any evidence that could have warranted a further suspension for serious offences under the applicable regulations, which could have warranted, depending on the circumstances, the issuance of a notice of cancellation. [Emphasis added]

[20] In the final chapter of its reasons, the Tribunal described the content of the public interest raised by the Minister on several occasions to justify cancelling a certificate, namely the public interest in aviation safety. It analysed several recent decisions of the Transportation Appeal Tribunal of Canada, including the one affirmed by the Federal Court of Canada in *Bancarz v. Canada (Minister of Transport)*, [2007] F.C.J. No. 599, a decision by my colleague Justice Phelan. It quoted paragraphs 48 and 49 of that judgment:

> **48** In these other cases, the number of incidents of infractions was much higher than Bancarz's; for example, in *Jensen v. Canada (Minister of Transport)*, [1997] C.A.T.D. No. 49, there were 65 contraventions over 30 years; in *Spur Aviation Ltd. v. Canada (Minister of Transport)*, [1997] C.A.T.D. No. 24 (Jensen's company), there were 100 incidents resulting in cancellation. In *Marin v. Canada (Minister of Transport)*, [1995] C.A.T.D. No. 14, the Minister suspended Mr. Marin's AME licence on grounds of incompetence based upon 15 major incidents. Despite the finding of incompetence, Marin was given an opportunity to re-qualify.
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> **49** Other cases such as *Poole v. Canada (Minister of Transport)*, [2000] C.A.T.D. No. 55 and *Lockhart v. Canada (Minister of Transport)*, [1999] C.A.T.D. No. 29, indicate that in this field of regulated activity there must be either numerous incidents or major incidents with clear evidence of wrongdoing to justify suspension or cancellation.

[21] The Tribunal found that, "[w]hen relying on the principle of public interest to suspend or cancel a Canadian aviation document, the Minister must be able to show the occurrence of serious events or of several events with clear evidence establishing that the holder of the Canadian aviation document committed offences under the regulations."

[22] The Tribunal noted that the Minister had been justified in suspending the flight school operator certificate in December 2006 and had imposed conditions for reinstatement that he found appropriate on Sept-Îles Aviation, all of which had to be met to his department's satisfaction. The Tribunal noted that those conditions had been met by the respondent, that Transport Canada managers had declared that they were satisfied with this and that the suspension of the certificate had therefore been lifted on February 23, 2007, which meant that Sept-Îles Aviation had been authorized to resume its flight school activities.

[23] The Tribunal stated that, three months after reinstatement of its operations, the Minister had notified Sept-Îles Aviation of the cancellation (and not suspension) of certificate no. 8304 even though the company had not been the subject of any other notice of offence between February 23, 2007 (lifting of the suspension) and May 8, 2007 (date of the notice of cancellation). The Tribunal stated the following: "The absence of new offences during this period had a serious impact on the determination that the Tribunal must make concerning the notice of cancellation of the applicant's FTUOC and will continue to play an essential role in keeping such an operator certificate in effect."

[24] The Tribunal concluded as follows:

> **59** Basing itself on the tests set out by the Federal Court in *Bancarz* and applying them to this case, the Tribunal is not satisfied that the Minister of Transport has proved on a balance of probabilities that public interest and, in particular, the aviation record of the applicant and of its principal concerning the operation of the flight training unit, warrant the cancellation of the FTUOC. [Emphasis added]

[25] As for the second part of the determination, which was made under subsection 7.1(8) of the Act, which authorizes a member of the Tribunal to grant a stay of the cancellation "if he or she is satisfied that granting a stay would not constitute a threat to aviation safety", the Minister was opposed to a stay because it would have enabled Sept-Îles Aviation to resume operating its school. The Minister referred to Mr. Lévesque's record and the fact that his company was the subject of a notice cancelling its operations as an air carrier. The Minister argued, without more, that the grounds of public interest did not favour the reinstatement of the school's operations.

[26] The Tribunal rejected the Minister's arguments:

> **66** The evidence submitted at the hearing demonstrated that the applicant resumed operation of its flight training unit in February 2007 after the suspension was lifted on its FTUOC, as it had then met all requirements imposed by Transport Canada in that regard and specified in the conditions for reinstatement attached to the notice of suspension.
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> **67** Since resumption of flight training unit operations in February 2007, the evidence also revealed that the applicant continued to comply with the maintenance standards imposed by Transport Canada, and the applicant did not receive any further notice of offence or letter of notification from Transport Canada that might indicate one or more offences under the CARs. Further, the applicant was not involved in any serious incident or accident concerning air safety in the operation of its flight training unit.

Analysis

1. Preliminary Issue

[27] As already noted, the preliminary issue is very simple, namely whether subsection 7.2(1) of the Act gives the Minister a right to appeal to the second level of the Tribunal from a member's determination under subsection 7.1(7) of the Act, which provides that the member may confirm the Minister's decision under paragraph 7.1(1)(*c*) of the Act or refer the decision back to the Minister for reconsideration.

[28] Clearly, there is an obvious contradiction between the English and French versions of the current subsection 7.2(1) of the Act; the two versions are not ambiguous. The English wording of subsection 7.2(1) does not give the Minister a right to appeal a first-level determination made under subsection 7.1(7) of the Act, while the French version does give the Minister that right. Counsel for Sept-Îles Aviation agrees with this.

[29] As recently confirmed by the Supreme Court of Canada in *R. v. Daoust*, [2004] 1 S.C.R. 217, in situations where there is an obvious conflict between the two versions of an enactment, legal authors insist that recourse must be had to the ordinary rules of statutory interpretation, which seek to discover, as counsel for the AGC suggests, [TRANSLATION] "the meaning of the provision that is in harmony with the purpose and scheme of the Act or simply Parliament's intention".

[30] Based on the legislative history of subsection 7.2(1) of the Act since its enactment in 1985, consistency in analysing the Appeal Tribunal's powers and Bill C-7 amending the *Aeronautics Act*, which is now at the third reading stage in the House of Commons, the AGC submits that

Parliament's intention is better reflected in the English version of subsection 7.2(1) of the Act, which has always denied the Minister the right to appeal to three members at the Tribunal's second level from a determination made under subsection 7.1(7) of the Act. In my opinion, the AGC is correct.

[31] A historical analysis of the wording of subsection 7.2(1) reveals that, before that provision was amended in 2004 under an implementing statute, the English and French versions since 1985 had matched, since neither gave the Minister a right to appeal a determination made under subsection 7.1(7). In 2004, the *Public Safety Act, 2002*, S.C. 2004, c. 15, amended section 7.2 of the *Aeronautics Act* to give the Minister, in the French version only, a right to appeal to the second level from a member's determination under subsection 7.1(7), thus creating complete discordance with the English version, which still reflected the legal situation that had existed since the passage of the Act: the Minister had no such right of appeal.

[32] Moreover, prior to the 2004 amendment, which is the source of the contradiction between the provision's two versions as regards the extent of the Minister's right of appeal, the absence of a right of appeal for the Minister was consistently accompanied by a duty to refer the Minister's decision back to the Minister for reconsideration if the Tribunal found that it could not confirm that decision.

[33] This was the case when the Tribunal was reviewing a decision by the Minister to refuse to issue or amend a Canadian aviation document (subsection 6.72(4) of the Act); a decision by the

Minister relating to a person's designation under section 4.84 of the Act (paragraph 7(7)(*a*) of the Act); and the decision by the Minister in the case before this Court.

[34] There was also consistency among the Act's provisions granting the Tribunal the power to substitute its own determination for the Minister's decision in cases where it did not confirm that decision. When the Tribunal had that power, the Minister was given a right to appeal to three members at the second level. This situation existed where the Tribunal was reviewing a decision by the Minister to suspend or cancel a Canadian aviation document on the grounds that its holder or the owner or operator of any aircraft, airport or other facility in respect of which it was issued had contravened any provision of Part I of the Act (subsection 6.9(1) of the Act) and where it was reviewing a decision to suspend a Canadian aviation document on the grounds that an immediate threat to aviation safety or security existed or was likely to occur as a result of an act or thing that was being done under the authority of the document or that was proposed to be done under the authority of the document (paragraph 7(7)(*b*) of the Act).

[35] The AGC submits that giving the Minister a right to appeal to the second level in cases where the Minister has the right to reconsider the Minister's own decision seems illogical.

[36] Finally, the AGC draws the Court's attention to Bill C-7, which had its first reading on October 29, 2007. That bill amends subsection 7.2(1) of the Act to make both versions identical. It is the French version that is amended by eliminating the Minister's right to appeal to the second level of the Appeal Tribunal from a first-level determination made under subsection 7.1(7).

[37] In my opinion, these three indicia of Parliament's intention are consistent; the French version of subsection 7.2(1) of the Act that was passed in 2004 resulted from a drafting error.

[38] I therefore find that the AGC's application for judicial review in this case was the only way open to the Minister to challenge Member Fortier's determination. Challenging it by way of an application for judicial review is therefore necessary and appropriate.

2. *Dunsmuir*

[39] The parties filed their memorandums before the Supreme Court of Canada decided in *Dunsmuir v. New Brunswick*, 2008 SCC 9, to reduce the number of standards for the judicial review of decisions of administrative tribunals from three to two, namely correctness and reasonableness; patent unreasonableness has been included in the reasonableness standard. The purpose of that reform undertaken by the Supreme Court was to simplify things and sort out the tests used in reviewing the decisions of administrative decision makers because, according to Justices Bastarache and LeBel, who wrote the majority reasons, "[t]he recent history of judicial review in Canada has been marked by ebbs and flows of deference, confounding tests and new words for old problems, but no solutions that provide real guidance for litigants, counsel, administrative decision makers or judicial review judges" (paragraph 1). In my opinion, it was from this perspective that Justices Bastarache and LeBel developed and stated certain guidelines to make it easier to apply the reform resulting from *Dunsmuir*. This was why the majority in *Dunsmuir* established certain presumptions relating to the scope of the reasonableness and correctness standards of review. Justices Bastarache and LeBel wrote the following at paragraphs 51, 53 and 55:

> [51] . . . As we will now demonstrate, questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness while many legal issues attract a standard of correctness. Some legal issues, however, attract the more deferential standard of reasonableness.
>
> . . .
>
> [53] Where the question is one of fact, discretion or policy, deference will usually apply automatically (*Mossop*, at pp. 599-600; *Dr. Q*, at para. 29; *Suresh*, at paras. 29-30). We believe that the same standard must apply to the review of questions where the legal and factual issues are intertwined with and cannot be readily separated.
>
> . . .
>
> [55] A consideration of the following factors will lead to the conclusion that the decision maker should be given deference and a reasonableness test applied:
>
> > A privative clause: this is a statutory direction from Parliament or a legislature indicating the need for deference.
> >
> > A discrete and special administrative regime in which the decision maker has special expertise (labour relations for instance).
> >
> > The nature of the question of law. A question of law that is of "central importance to the legal system . . . and outside the . . . specialized area of expertise" of the administrative decision maker will always attract a correctness standard (*Toronto (City) v. C.U.P.E.*, at para. 62). On the other hand, a question of law that does not rise to this level may be compatible with a reasonableness standard where the two above factors so indicate. [Emphasis added]

[40] With regard to judicial review on the correctness standard, the two judges stated at paragraph 57 that existing jurisprudence "may be helpful in identifying some of the questions that generally fall to be determined according to the correctness standard", including:

- Questions regarding the division of powers between Parliament and the provinces;

- "True" questions of jurisdiction or *vires*, "where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter. The tribunal must interpret the grant of authority correctly or its action will be found to be *ultra vires* or to constitute a wrongful decline of jurisdiction" (paragraph 59).

- Questions of general law that are "both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise", "[b]ecause of their impact on the administration of justice", and questions regarding "jurisdictional lines between two or more competing specialized tribunals" (paragraph 60).

[41] *Dunsmuir* also defined the parameters of a reasonable decision. At paragraph 47, Justices Bastarache and LeBel answered the following question: "But what is a reasonable decision?"

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is <u>also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law</u>.

[42] I note that the concept of "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" was expressed as follows in the

French version: “l’appartenance de la décision aux issues possibles acceptables pouvant se justifier au regard des faits et du droit”.

[43] In discussing what constitutes a reasonable decision, the judges writing for the majority elaborated on the concept of deference, “so central to judicial review in administrative law”. They warned that courts may not “be content to pay lip service to the concept of reasonableness review while in fact imposing their own view. Rather, deference imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law.” Deference requires “a respectful attention to the reasons offered or which could be offered in support of a decision” (quoting Professor Dyzenhaus). “In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system” (paragraphs 48 and 49).

3. Standard of Review

[44] In his written memorandum filed before *Dunsmuir* was decided, counsel for the AGC recommended that the standard of review in this case be that of reasonableness; he reached that conclusion by considering the four factors relevant to the “pragmatic and functional analysis”, which the Supreme Court now refers to simply as the “standard of review analysis”: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue and the expertise of the tribunal.

[45] In *Dunsmuir*, Justices Bastarache and LeBel made two points about the standard of review analysis. At paragraph 62, they wrote:

> [62] In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review. [Emphasis added]

[46] Second, they added: "In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case."

[47] Prior to *Dunsmuir*, cases that discussed the standard of review for decisions of the Transportation Appeal Tribunal of Canada leaned toward the reasonableness standard.

[48] In *Asselin v. Canada (Minister of Transport)*, [2000] F.C.J. No. 256, Justice Pinard wrote the following at paragraph 11:

> **11** Taking into account, therefore, the existence of a privative clause, the expertise of the Appeal Panel, the safety of the public contemplated by the Act and the technical and specialized nature of the Regulations, I am of the view that a standard based on judicial deference is appropriate. However, given that the issue before the Appeal Panel involved not only a question of fact but a question of law pertaining to the interpretation and application of subsection 801.01(2) of the Regulations and par. 2.5 of chapter 1 of standard 821 of the Separation Standards, I believe, as my colleague Gibson J. held in *Killen v. Canada (Minister of Transport)* (June 8, 1999), T-2410-97, in regard to another decision of the same Appeal Panel, that the applicable standard of review is situated somewhere between correctness and patent unreasonableness, that is, it is the reasonableness *simpliciter* standard.

[49] After Mr. Asselin appealed, the Federal Court of Appeal, [2001] F.C.J. No. 43, expressed complete agreement with Justice Pinard.

[50] The reasonableness standard was applied in *Butterfield v. Canada (Attorney General)*, 2006 FC 894, at paragraph 70, and *Air Nunavut Ltd. v. Canada (Minister of Transport)*, [2001] 1 F.C. 138, at paragraph 47. In *Hudgin v. Canada (Minister of Transport)*, 2002 FCA 102, Justice Evans, at paragraph 7, was prepared to assume, "but without deciding the issue, that the applicable standard in this case is that of unreasonableness".

[51] Recently, in *Skyward Aviation Ltd. v. Canada (Minister of Transport)*, 2008 FC 325, Justice Snider applied the correctness standard to a decision of an appeal panel of the Tribunal when the question at issue was whether the panel had erred in finding that it did not have jurisdiction to review a notice of suspension. Relying on *Nunavut*, above, at paragraph 31, my colleague was of the opinion that that question was a question of pure law or statutory interpretation.

[52] When this application for judicial review was heard, counsel for the applicant argued that the Tribunal had erred in law by misinterpreting paragraph 7.1(1)(*c*) of the Act when it severed 20 of the grounds for cancellation relied on by the Minister in cancelling the training unit operator certificate. Counsel for Sept-Îles Aviation argues that the reasonableness standard applies.

[53] I am aware of the debate in *Dunsmuir* over the circumstances in which a question of law may be subject to the reasonableness standard.

[54] In the circumstances, I find that I must proceed with an analysis of the factors making it possible to identify the proper standard of review.

[55] I note the following:

- the *Transportation Appeal Tribunal of Canada Act* contains a privative clause in section 21, but that section applies only to a decision "of an appeal panel of the Tribunal". As we have determined, the Minister could not appeal to an appeal panel in this case. Accordingly, no privative clause applies to the member's determination in this case;

- the Tribunal has recognized expertise when deciding a request for review or an appeal on the merits; however, questions of law, including statutory interpretation, do not fall squarely within the expertise of the Tribunal (*Nunavut*, above, at paragraph 47);

- the basic question at issue is a question of law;

- the Tribunal's mandate is to give the aviation public the opportunity to appeal administrative decisions that affect licences or impose penalties under the Act (*Nunavut*, paragraph 21).

[56] Based on all these factors, I conclude that Parliament intended the correctness standard to apply.

[57] For the reasons that follow, however, I find that the outcome would be the same if the standard of review were reasonableness.

4. Discussion

[58] In my opinion, the main question raised by the AGC is whether the Tribunal misinterpreted paragraph 7.1(1)(*c*) of the Act when it divided up the 30 grounds for cancellation common to both operator certificates based on its opinion of which grounds related exclusively to each certificate cancelled by the Minister on May 8, 2007.

[59] Subsection 7.1(1) of the Act reads as follows:

Suspension, etc., on other grounds	**Autres motifs**
7.1 (1) If the Minister decides to suspend, cancel or refuse to renew a Canadian aviation document on the grounds that	7.1 (1) Le ministre, s'il décide de suspendre, d'annuler ou de ne pas renouveler un document d'aviation canadien pour l'un des motifs ci-après, expédie un avis par signification à personne ou par courrier recommandé ou certifié à la dernière adresse connue du titulaire du document ou du propriétaire, de l'exploitant ou de l'utilisateur de l'aéronef, de l'aéroport ou autre installation que vise le document :
(a) the holder of the document is incompetent,	a) le titulaire du document est inapte;
(b) the holder or any aircraft, airport or other facility in respect of which the document was issued ceases to meet the qualifications necessary for the issuance of the document or to fulfil the conditions subject to which the document was issued, or	b) le titulaire ou l'aéronef, l'aéroport ou autre installation ne répond plus aux conditions de délivrance ou de maintien en état de validité du document;
(c) the Minister is of the opinion that the public interest and, in particular, the aviation record of the holder of the document or of any principal of the holder, as defined in regulations made under paragraph 6.71(3)(a), warrant it,	c) le ministre estime que l'intérêt public, notamment en raison des antécédents aériens du titulaire ou de tel de ses

the Minister shall, by personal service or by registered or certified mail sent to the holder or the owner or operator of the aircraft, airport or facility, as the case may be, at their latest known address, notify that person of the Minister's decision.	dirigeants — au sens du règlement pris en vertu de l'alinéa 6.71(3) a) —, le requiert.

[60] I will refer to two principles of statutory interpretation. The first was stated by Professor Driedger in his book *Construction of Statutes* and has been approved many times by the Supreme Court of Canada. See *Rizzo & Rizzo Shoes Ltd*., [1998] 1 S.C.R. 27, at paragraph 21:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. [Emphasis added]

[61] The second principle of statutory interpretation was reiterated by Justice Binnie in his concurring reasons in *Dunsmuir*, at paragraphs 150 and 151, where he talked about the nub of the difficulty of determining a decision's reasonableness. He expressed the view "that 'reasonableness' depends on the context. It must be calibrated to fit the circumstances. . . . The standard ('reasonableness') stays the same, but the reasonableness assessment will vary with the relevant circumstances."

[62] Since he was of the view that "what is required . . . is a more easily applied framework into which the judicial review court and litigants can plug in the relevant context", he stated the following: "No one doubts that in order to overturn an administrative outcome on grounds of substance (i.e. leaving aside errors of fairness or law . . .), the reviewing court must be satisfied that

the outcome was outside the scope of reasonable responses open to the decision maker under its grant of authority, usually a statute."

[63] It was at this point in his analysis that Justice Binnie noted the following: "'[T]here is always a perspective', observed Rand J., 'within which a statute is intended [by the legislature] to operate': *Roncarelli v. Duplessis*, [1959] S.C.R. 121, at p. 140." Justice Binnie asked the following question: " How is that 'perspective' to be ascertained?" At paragraph 151, he listed the factors that a reviewing judge "will obviously want to consider":

- the precise nature and function of the decision maker, including its expertise;
- the terms and objectives of the governing statute (or common law) conferring the power of decision, including the existence of a privative clause; and
- the nature of the issue being decided.

[64] Justice Binnie was of the opinion that "[c]areful consideration of these matters will reveal the extent of the discretion conferred, for example, the extent to which the decision formulates or implements broad public policy. . . . In some cases, the court will have to recognize that the decision maker was required to strike a proper balance (or achieve proportionality) between the adverse impact of a decision on the rights and interests of the applicant or others directly affected weighed against the public purpose which is sought to be advanced." [Emphasis added]

[65] I will now apply these two principles of statutory interpretation to the instant case. The mandate of the Minister of Transport and officials in the Department of Transport is to enforce the law and regulations in the interest of public safety (*Swanson v. Canada (Minister of Transport)*,

[1992]1 F.C. 408 (C.A.) (*Swanson*), at paragraph 27). The public interest to which paragraph 7.1(1)(*c*) refers is the public interest in aviation safety (*Bancarz v. Canada (Minister of Transport)*, 2007 FC 451 (F.C.), at paragraph 44). The Minister "bears a heavy responsibility towards the public to ensure that aircraft and air carrier operations are conducted safely. This is especially so for Transport Canada inspectors who are in practice charged with the duty of maintaining safety" (*Sierra Fox Inc. v. Canada (Minister of Transport)*, 2007 FC 129, at paragraph 6), and ". . . the statutory scheme vests broad discretion in the Minister in the interest of public safety" (*Kiss v. Canada (Minister of Transport)*, [1999] F.C.J. No. 1187, at paragraph 31).

[66] As well, Justice Linden wrote the following in *Swanson*, at paragraph 37:

> The need for strict compliance with safety standards underscores the obvious importance of passenger safety. The defendant is responsible for the certification of each carrier and their inspection, airworthiness of the equipment and its maintenance. Not only is the granting of the licence the job of this department, but also the need to monitor the airlines to ensure that they remain qualified. One of the warning signs which may alert an inspector that an air carrier is not operating safely, as set out in the Air Carrier Certification Manual, is high pilot turnover. Another is inadequate maintenance. Both of these danger signals were abundantly apparent to Transport Canada as they observed Wapiti. [Emphasis added]

[67] The Federal Court of Appeal's decision in *Swanson* is important. It was a case in which the widows of three passengers killed in an air crash sued the federal Crown for damages, alleging that the negligence of Department of Transport inspectors had contributed to their loss. Justice Linden, writing for the Federal Court of Appeal, found that the Crown had a civil duty to use reasonable care given that the task of the Department of Transport officials who had issued operating certificates that focused mainly on the matter of safety "was to enforce the regulations

and the ANO's [Air Navigation Orders] as far as safety was concerned to the best of their ability with the resources at their disposal" (see paragraph 28).

[68] In *Swanson*, Justice Linden also held that "the servants of the Crown were negligent in their supervision of Wapiti and its pilots". At paragraph 35 of his reasons, Justice Linden agreed with the trial judge, Justice Walsh, who had stated that the plaintiff had to "establish that Transport Canada was negligent with respect to the steps it did not take before the crash" and that the Crown had "plenty of time to remedy this by withdrawing permission". [Emphasis added]

[69] At paragraphs 38 and 39 of *Swanson*, he reviewed the enforcement standards available under the law as well as the practice in this field:

> **38** There were also standards set out for enforcement. Four official enforcement techniques were available to Transport Canada: warning, suspension, prosecution and cancellation of a licence. Warnings were used in the case of most first offences. These enforcement techniques could be carried out through four different types of action: referral, administrative, judicial, and joint administrative and judicial. While administrative action was to be used in most cases, the Transport Canada Enforcement Manual stated that it was not to be employed in cases "where it would be clearly ineffective in promoting flight safety and compliance." The Regional Director had the power to suspend operating certificates, permits, licences and other flight authorization documents.
>
> **39** Contained in ANO series 7 is a guideline of sanctions appropriate to various violations. A first offence of failing to maintain log books could attract a range of punishment varying from a warning to a $1,000 fine or a 14-day suspension. For the second offence, a 30-60 day suspension or a $2,500 fine was recommended. This progressive punishment was part of the policy of the Department in treating repeat offences. It is clear that the Department had the responsibility to enforce compliance with the rules as well as performing inspections. [Emphasis added]

[70] Like Justice Walsh, Justice Linden found at paragraph 44 that "there was plenty of time for them to come to the conclusion that their permission to continue these practices should be

withdrawn. Wapiti failed to respond to repeated warnings with anything more than unfulfilled promises to comply with the specifications of their operating certificates. Transport Canada's acceptance of these repeated assurances was entirely inconsistent with its function of promoting passenger safety." He concluded as follows at paragraph 50 of *Swanson*: "Transport Canada's failure to take any meaningful steps to correct the explosive situation which it knew existed at Wapiti amounted to a breach of the duty of care it owed the passengers." [Emphasis added]

[71] Finally, the Transportation Appeal Tribunal of Canada has ruled on the content of public interest under the Act. In *Bancarz*, it wrote:

> Subsection 6.71(1) provides another indication of a particular concern which is in the public interest; the aviation record of the applicant, clearly a reference to safety and compliance with aviation. Hence, it is entirely correct for the Department to produce the history or record of the applicant's past contraventions in establishing its concern for the public interest. The public interest as asserted by the Minister is a societal interest that relates to the protection and safety of the public and the users of the system as part of its policy regarding the development, regulation and supervision of all matters connected with aeronautics, and the maintenance of an acceptable level of safety. [Emphasis added]

[72] In my opinion, this overview of the case law clearly demonstrates the purpose of the Act's provisions authorizing the Minister to refuse to issue or amend an aviation document (subsection 6.71(1) of the Act) or to suspend or cancel such a document (subsection 7.1(1) of the Act) on the grounds that "the Minister is of the opinion that the public interest and, in particular, the aviation record of the holder of the document or of any principal of the holder . . . warrant it".

[73] The purpose of these two provisions is to provide the Minister with one tool, among others, to promote the objective of the Act, which mandates the Minister and the Minister's officials to

ensure public safety in aviation by authorizing the Minister to prevent non-compliance with the Act and Regulations. The public interest is engaged when past non-compliance is serious and repeated enough to conclude that there is a risk of further offences and that the operator must therefore stop using the certificate.

[74] The onus is on the Minister to provide such a justification. Here, as already noted, the Minister relied on all the instances in which Sept-Îles Aviation or Jacques Lévesque had failed to comply with the Act and Regulations as grounds for cancelling the company's two operator certificates. The documentary and testimonial evidence was the same for both certificates, and everything was debated before the Tribunal in one sitting at Sept-Îles.

[75] This consideration of the public interest to justify a cancellation was not new, nor was the way the Minister's evidence was presented. This procedure was adopted by the Tribunal at the first level in *Spur Aviation Ltd. v. Canada (Minister of Transport)*, [1997] C.A.T.D. No. 24. In that case, which was also based on paragraph 7.1(1)(*c*) of the Act, three operator certificates issued to Spur Aviation by the Minister were cancelled on April 29, 1996. For the three files, the record (non-compliance with the Act and Regulations resulting in operator certificate suspensions, violations, fines, suspensions of flight authorities, warnings, inability to comply with conditions for reinstatement, failure of aircraft to meet applicable standards) was the same, and everything was submitted as one case. That common evidence was also used when the Minister, relying again on paragraph 7.1(1)(*c*), cancelled the aircraft maintenance engineer licence issued to Robert O. Jensen, Spur Aviation's senior manager, [1997] C.T.A.D. No. 49.

[76] In *Nexjet Aviation Inc. v. Canada (Minister of Transport)*, [2006] C.T.A.T.D. No. 33, another public interest case under paragraph 7.1(1)(*c*) of the Act, although there was no double cancellation of operator certificates, the Minister made his case by listing 20 grounds for cancellation, the first of which was dated November 20, 2002. The Tribunal concluded as follows at paragraphs 176 to 178 of its reasons:

> **176** The records of NexJet and its principal show a continuing pattern of non-compliance with regulations or its own approved procedures. That is illustrated by the number of suspensions it has incurred in its four-year history. The grounds underlying the suspensions are most often safety related. Several of these suspensions were of short duration as the company took quick action to come into compliance. The troubling factor is that not long after coming into compliance, the company reverts to its former style.
>
> **177** Mr. Kirkpatrick had asked somewhat rhetorically what had happened after October 19, 2005, when that last notice of suspension was rescinded. He pointed out that at that time Transport Canada must be taken to be satisfied that the public interest was being served and that NexJet was a safe operation as it restored the AOC.
>
> **178** What happened next was the company's west coast operation and the litany of unsafe practices that unfolded under Mr. Virdi's stewardship. It could not be said that aviation safety and hence the public interest were being served by allowing NexJet to operate as it did. I concur with the Minister's decision to cancel the AOC. [Emphasis added]

5. Conclusions

[77] In *Swanson*, Justice Linden rightly noted that: (1) the Act gave the Minister a range of powers for regulating air travel in Canada to ensure public safety; (2) preventing crashes was essential in this context; and (3) in some circumstances, an operator certificate had to be cancelled to put an end to an air carrier's operations.

[78] In paragraph 7.1(1)(*c*) of the Act, the Parliament of Canada, in clear and precise language, has authorized the Minister to cancel an operator certificate if "the Minister is of the opinion that the public interest and, in particular, the aviation record of the holder of the document or of any principal of the holder . . . warrant it" (in French: "le ministre estime que l'intérêt public, notamment en raison des antécédents aériens du titulaire ou de tel de ses dirigeants . . . le requiert").

[79] The decisions of the Appeal Tribunal and this Court have recognized that, where a certificate is cancelled on public interest grounds, the Minister is entitled to look at the entire record of the licensee or its principals, that is, all infractions against the Act or Regulations (*Bancarz*, above, at paragraph 46).

[80] The position taken by the Minister before the Tribunal was that the public interest warranted cancelling the school's operation because a culture of non-compliance with the Act and Regulations had developed at Sept-Îles Aviation. That company was run by Jacques Lévesque, who was in fact operating his school and his air taxi service together and performing several jobs in his company: chief instructor at the school, maintenance manager, chief pilot and operations manager.

[81] The Minister's justification was also based on the fact that, each time Sept-Îles Aviation met the conditions for reinstatement following a suspension, it then repeatedly failed to comply with the Act and Regulations. Moreover, the burden of justification was on the Minister. The Minister had to prove his case.

[82] In my opinion, the word “record” (“antécédents” in French) in paragraph 7.1(1)(*c*) of the Act clearly refers to the contravention history of the holder of an operator certificate. Where serious and repeated contraventions occur, the Minister has the authority to cancel the certificate to prevent non-compliance in the interest of aviation safety rather than waiting for the worst to happen.

[83] In the circumstances of this case, I find that the Minister had no power to exclude, as he did, consideration of the 20 grounds for cancellation on which the Minister had relied. That exclusion went to the heart of the circumstances relied on by the Minister in cancelling the certificate. In my view, the exclusion was contrary to the purpose of paragraph 7.1(1)(*c*), which is to provide a remedy for possible prevention in appropriate circumstances involving public safety.

[84] I find that, because of that exclusion, the Tribunal did not consider all the evidence before it; it erred in law and, from the perspective of *Hudgin*, the result of the exclusion was that the Tribunal’s decision was unreasonable.

[85] Allowing this application for judicial review means setting aside the Tribunal’s determination, which referred the Minister’s decision back to the Minister for reconsideration. A new Tribunal will have to reconsider the determination set aside. In this situation, it is unnecessary to rule on the stay of the Minister’s decision.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that this application for judicial review is allowed with costs; the Tribunal's determination dated July 24, 2007 is set aside and the matter is referred back to another member for reconsideration.

"François Lemieux"

_____

Judge

Certified true translation
Brian McCordick, Translator

SCHEDULE 1

1. *Aeronautics Act*:

Suspension, etc., on other grounds

7.1 (1) If the Minister decides to suspend, cancel or refuse to renew a Canadian aviation document on the grounds that

(a) the holder of the document is incompetent,

(b) the holder or any aircraft, airport or other facility in respect of which the document was issued ceases to meet the qualifications necessary for the issuance of the document or to fulfil the conditions subject to which the document was issued, or

(c) the Minister is of the opinion that the public interest and, in particular, the aviation record of the holder of the document or of any principal of the holder, as defined in regulations made under paragraph 6.71(3)(a), warrant it,

the Minister shall, by personal service or by registered or certified mail sent to the holder or the owner or operator of the aircraft, airport or facility, as the case may be, at their latest known address, notify that person of the Minister's decision.

Contents of notice

(2) A notice under subsection (1) shall be in such form as the Governor in Council may by regulation prescribe and shall, in addition to any other information that may

Autres motifs

7.1 (1) Le ministre, s'il décide de suspendre, d'annuler ou de ne pas renouveler un document d'aviation canadien pour l'un des motifs ci-après, expédie un avis par signification à personne ou par courrier recommandé ou certifié à la dernière adresse connue du titulaire du document ou du propriétaire, de l'exploitant ou de l'utilisateur de l'aéronef, de l'aéroport ou autre installation que vise le document :

a) le titulaire du document est inapte;

b) le titulaire ou l'aéronef, l'aéroport ou autre installation ne répond plus aux conditions de délivrance ou de maintien en état de validité du document;

c) le ministre estime que l'intérêt public, notamment en raison des antécédents aériens du titulaire ou de tel de ses dirigeants — au sens du règlement pris en vertu de l'alinéa 6.71(3) a) —, le requiert.

Contenu de l’avis

(2) L’avis est établi en la forme que peut fixer le gouverneur en conseil par règlement. Y sont en outre indiqués :

a) soit la raison fondée sur l'intérêt public à l'origine, selon le ministre, de la mesure, soit la nature de l'inaptitude, soit encore les conditions — de délivrance ou de maintien en état de validité — auxquelles, selon le

be so prescribed,

(a) indicate, as the case requires,

(i) [Repealed, 2001, c. 29, s. 37]

(ii) the nature of the incompetence of the holder of the Canadian aviation document that the Minister believes exists, the qualifications necessary for the issuance of the document that the Minister believes the holder of the document or the aircraft, airport or facility in respect of which the document was issued ceases to have or the conditions subject to which the document was issued that the Minister believes are no longer being met or complied with, or

(iii) the elements of the public interest on which the decision of the Minister is based; and

(b) state the date, being thirty days after the notice is served or sent, on or before which and the address at which a request for a review of the decision of the Minister is to be filed in the event the holder of the document or the owner or operator concerned wishes to have the decision reviewed.

Effective date of Minister's decision

(2.1) The Minister's decision to suspend or cancel a Canadian aviation document takes effect on the date of receipt of the notice under subsection (1) by the person on whom it is served or to whom it is sent, unless the notice indicates that the decision is to take effect on a later date.

Request for review of Minister's decision

(3) Where the holder of a Canadian aviation document or the owner or

ministre, le titulaire ou l'aéronef, l'aéroport ou autre installation ne répond plus;

b) le lieu et la date limite, à savoir trente jours après l'expédition ou la signification de l'avis, du dépôt d'une éventuelle requête en révision.

Prise d'effet de la décision

(2.1) La décision du ministre prend effet dès réception par l'intéressé de l'avis ou à la date ultérieure précisée dans celui-ci.

Requête en révision

(3) L'intéressé qui désire faire réviser la décision du ministre dépose une requête à cet effet auprès du Tribunal à l'adresse et pour la date limite indiquées dans l'avis, ou dans le délai supérieur éventuellement accordé à sa demande par le Tribunal.

Effet de la requête

(4) Le dépôt d'une requête en révision n'a pas pour effet de suspendre la mesure prise par le ministre.

Audition

(5) Le Tribunal, sur réception de la requête, fixe aussitôt le lieu et la date de l'audience, laquelle est à tenir dans les meilleurs délais possible suivant le dépôt de la requête, et il en avise par écrit le ministre et l'intéressé.

Déroulement

(6) À l'audience, le conseiller commis à l'affaire donne au ministre et à l'intéressé la possibilité de lui présenter leurs éléments de preuve et leurs observations sur la mesure attaquée, conformément aux

operator of any aircraft, airport or other facility in respect of which a Canadian aviation document is issued who is affected by a decision of the Minister referred to in subsection (1) wishes to have the decision reviewed, he shall, on or before the date that is thirty days after the notice is served on or sent to him under that subsection or within such further time as the Tribunal, on application by the holder, owner or operator, may allow, in writing file with the Tribunal at the address set out in the notice a request for a review of the decision.

(4) A request for a review of the decision of the Minister under subsection (3) does not operate as a stay of the suspension, cancellation or refusal to renew to which the decision relates.

Appointment of review time

(5) On receipt of a request filed in accordance with subsection (3), the Tribunal shall forthwith appoint a time, as soon as practicable after the request is filed, and place for the review of the decision referred to in the request and in writing notify the Minister and the person who filed the request of the time and place so appointed.

Review procedure

(6) At the time and place appointed under subsection (5) for the review of the decision, the member of the Tribunal assigned to conduct the review shall provide the Minister and the holder of the Canadian aviation document or the owner or operator affected by the decision, as the case may be, with an opportunity consistent with procedural fairness and natural justice to present evidence and make representations in relation to the

principes de l’équité procédurale et de la justice naturelle.

Décision

(7) Le conseiller peut confirmer la décision du ministre ou lui renvoyer le dossier pour réexamen.

Réexamen du dossier

(8) En cas de renvoi du dossier au ministre, la décision d'annuler ou de suspendre continue d'avoir effet. Toutefois, le conseiller peut, après avoir entendu les observations des parties, prononcer la suspension de la décision jusqu'à ce que le ministre ait réexaminé celle-ci, s'il est convaincu que cela ne constitue pas un danger pour la sécurité aéronautique.

(9) [Abrogé, 2001, ch. 29, art. 37]

L.R. (1985), ch. 33 (1er suppl.), art. 1; 1992, ch. 1, art. 5, ch. 4, art. 15; 2001, ch. 29, art. 37 et 45.

Appel

7.2 (1) Le ministre ou toute personne concernée peuvent faire appel au Tribunal de la décision rendue en vertu du paragraphe 6.72(4), de l'alinéa 7(7)a) ou du paragraphe 7.1(7); seule une personne concernée peut faire appel de celle rendue en vertu du paragraphe 6.9(8) ou de l'alinéa 7(7)b). Dans tous les cas, le délai d'appel est de trente jours suivant la décision.

Perte du droit d'appel

(2) La partie qui ne se présente pas à l'audience portant sur la requête en révision perd le droit de porter la décision en appel, à moins qu'elle ne fasse valoir

suspension, cancellation or refusal to renew under review.

Determination of Tribunal member

(7) On a review under this section of a decision of the Minister to suspend, cancel or refuse to renew a Canadian aviation document, the member of the Tribunal who conducts the review may determine the matter by confirming the Minister's decision or by referring the matter back to the Minister for reconsideration.

Effect of decision pending reconsideration

(8) If a decision to suspend or cancel a Canadian aviation document is referred back to the Minister for reconsideration under subsection (7), the decision of the Minister remains in effect until the reconsideration is concluded. However, the member, after considering any representations made by the parties, may grant a stay of the decision until the reconsideration is concluded, if he or she is satisfied that granting a stay would not constitute a threat to aviation safety.

(9) [Repealed, 2001, c. 29, s. 37]
R.S., 1985, c. 33 (1st Supp.), s. 1; 1992, c. 1, s. 5, c. 4, s. 15; 2001, c. 29, ss. 37, 45.

Right of appeal

7.2 (1) Within thirty days after the determination,

(a) a person affected by the determination may appeal a determination made under subsection 6.72(4), paragraph 7(7)(a) or subsection 7.1(7) to the Tribunal; or

(b) a person affected by the determination or the Minister may appeal a determination

des motifs valables justifiant son absence.

Sort de l'appel

(3) Le comité du Tribunal peut :

a) dans le cas d'une décision rendue en vertu du paragraphe 6.72(4), de l'alinéa 7(7)a) ou du paragraphe 7.1(7), rejeter l'appel ou renvoyer l'affaire au ministre pour réexamen;

b) dans le cas d'une décision rendue en vertu du paragraphe 6.9(8) ou de l'alinéa 7(7)b), rejeter l'appel ou y faire droit et substituer sa propre décision à celle en cause.

made under subsection 6.9(8) or paragraph 7(7)(b) to the Tribunal.

Loss of right of appeal

(2) A party that does not appear at a review hearing is not entitled to appeal a determination, unless they establish that there was sufficient reason to justify their absence.

Disposition of appeal

(3) The appeal panel of the Tribunal assigned to hear the appeal may

(a) in the case of a determination made under subsection 6.72(4), paragraph 7(7)(a) or subsection 7.1(7), dismiss the appeal or refer the matter back to the Minister for reconsideration; or

(b) in the case of a determination made under subsection 6.9(8) or paragraph 7(7)(b), dismiss the appeal, or allow the appeal and substitute its own decision.

2. *Transportation Appeal Tribunal of Canada Act*:

Hearings on review

12. A review shall be heard by a member, sitting alone, who has expertise in the transportation sector to which the review relates. However, a review that concerns a matter of a medical nature shall be heard by a member with medical expertise, whether or not that member has expertise in the transportation sector to which the review relates.

Requêtes en révision : audition

12. Les requêtes en révision sont entendues par un conseiller agissant seul et possédant des compétences reliées au secteur des transports en cause. Toutefois, dans le cas où la requête soulève des questions d'ordre médical, le conseiller doit posséder des compétences dans ce domaine, qu'il ait ou non des compétences reliées au secteur des transports en cause.

Hearings on appeal

13. (1) Subject to subsection (2), an appeal to the Tribunal shall be heard by an appeal

Appels : audition

13. (1) Sous réserve du paragraphe (2), les appels interjetés devant le Tribunal sont

panel consisting of three members.

Size of panel

(2) The Chairperson may, if he or she considers it appropriate, direct that an appeal be heard by an appeal panel consisting of more than three members or, with the consent of the parties to the appeal, of one member.

Composition of panel

(3) A member who conducts a review may not sit on an appeal panel that is established to hear an appeal from his or her determination.

Qualifications of members

(4) With the exception of the Chairperson and Vice-Chairperson, who may sit on any appeal panel, an appeal shall be heard by an appeal panel consisting of members who have expertise in the transportation sector to which the appeal relates.

Medical matters

(5) Despite subsection (4), in an appeal that concerns a matter of a medical nature, at least one member of the appeal panel shall have medical expertise, whether or not that member has expertise in the transportation sector to which the appeal relates.

Decision of panel

(6) A decision of a majority of the members of an appeal panel is a decision of the panel.

entendus par un comité de trois conseillers.

Effectif du comité

(2) Le président peut, s'il l'estime indiqué, soumettre l'appel à un comité de plus de trois conseillers ou, si les parties à l'appel y consentent, à un seul conseiller.

Composition du comité

(3) Le conseiller dont la décision est contestée ne peut siéger en appel, que ce soit seul ou comme membre d'un comité

Compétences des conseillers

(4) Les conseillers qui sont saisis d'un appel doivent, sauf s'il s'agit du président et du vice-président, qui peuvent siéger à tout comité, posséder des compétences reliées au secteur des transports en cause.

Questions d'ordre médical

(5) Toutefois, dans le cas où l'appel soulève des questions d'ordre médical, au moins un des conseillers doit posséder des compétences dans ce domaine, qu'il ait ou non des compétences reliées au secteur des transports en cause.

Décision

(6) Les décisions du comité se prennent à la majorité de ses membres.

SCHEDULE 2

11 The Tribunal considered the following evidence and grounds for cancellation:

1. On April 5, 1990, Jacques Lévesque did not comply with subsection 39(3) of the *Air Navigation Order*, series VII, no. 3, and he was assessed a penalty of $125 (Aviation Enforcement file no. 5504-15076).

2. On July 21, 1990, Jacques Lévesque did not comply with section 543 of the *Air Regulations* and he was assessed a penalty of $100 (Aviation Enforcement file no. 5504-16053).

3. On or about November 14, 1991, a notice of suspension was issued concerning the operating certificate of Entreprises Jacques Lévesque Enr., given the non-compliance with paragraph 5(1)(*d*) of the *Air Navigation Order*, series VII, no. 3. The suspension came into effect on December 14, 1991. Afterwards, a review hearing was held and the file was referred back to Transport Canada for reconsideration (CAT file no. Q-0289-10).

4. On December 2, 1991, Jacques Lévesque did not comply with paragraph 548(1)(*b*) of the *Air Regulations* and was assessed a penalty of $100 (Aviation Enforcement file no. 5504-19732).

5. On November 10, 1995, a notice of suspension was issued concerning the air operator certificate of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.), of which Jacques Lévesque was a principal, due to the discovery of several non-compliances in the course of a regulatory audit conducted from October 23 to 27, 1995.

6. On October 6, 2000, Jacques Lévesque did not comply with subsection 602.104(2) of the *Canadian Aviation Regulations* and he was assessed a penalty of $175 (Aviation Enforcement file no. 5504-42992).

7. On July 31, 2000, a notice of suspension was issued concerning the air operator certificate of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.), of which Mr. Lévesque was a principal, following the discovery of several non-compliances in the course of a regulatory audit conducted from May 16 to 17, 2000.

14. On March 30, 2003, Jacques Lévesque did not comply with section 602.101 of the *Canadian Aviation Regulations* and was assessed a penalty of $250 (Aviation Enforcement file no. 5504-50442).

15. On February 13, 2004, a notice of suspension was issued concerning the air operator certificate of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.), of which Jacques Lévesque was a principal, because the company no longer met the conditions for issuance, given that it no longer had a qualified chief pilot, as required pursuant to subparagraph 703.07(2)(*b*)(ii) of the *Canadian Aviation Regulations*.

16. On July 29, 2004, 2431-9154 Québec Inc. (Sept-Îles Aviation Enr./Eider Aviation), of which Jacques Lévesque was a principal, did not comply with section 103.03 of the *Canadian Aviation Regulations* following two requests to return the cancelled original air operator certificate.

19. On April 20, 2006, a notice of suspension was issued concerning the air operator certificate of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.), of which Jacques Lévesque was a principal, because the company no longer met the conditions for issuance, given that it no longer had a qualified chief pilot, as required pursuant to subparagraph 703.07(2)(*b*)(ii) of the *Canadian Aviation Regulations*. The notice of suspension did not come into effect because he met the requirements before expiry of the allotted time.

20. In November 2006, 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.) was inspected twice. Several allegations of offences under the *Canadian Aviation Regulations* and the *Aeronautics Act* were made against the company, Jacques Lévesque and the company's other pilot, Christophe Vallantin. As a result of these offences, the Aviation Enforcement Branch opened six investigation files, which are at various stages of progress. Notices of assessment of monetary penalty were issued for file nos. 5504-62256 and 5504-62257, while file nos. 5504-61907, 5504-61930, 5504-61937 and 5504-61938 are still at the allegation stage.

21. On December 7, 2006, Transport Canada cancelled the approval of Jacques Lévesque as maintenance manager of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.) because he did not fulfill his responsibilities, which included ensuring safe operations.

23. On December 7, 2006, Transport Canada cancelled the approval of Jacques Lévesque as operations manager of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.) because he did not fulfill his responsibilities, which included

ensuring safe operations. No request to review the Minister's decision was filed with the registrar of the Transportation Appeal Tribunal of Canada, which request would have had to be filed with the Tribunal no later than January 17, 2007, at 11:59 p.m. The cancellation is still in effect.

24. On December 7, 2006, Transport Canada cancelled the approval of Jacques Lévesque as chief pilot for 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.) because he did not fulfill his responsibilities, which included ensuring safe operations. No request to review the Minister's decision was filed with the registrar of the Transportation Appeal Tribunal of Canada, which request would have had to be filed with the Tribunal no later than January 17, 2007, at 11:59 p.m. The cancellation is still in effect.

25. On December 7, 2006, Transport Canada suspended the air operator certificate of 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.) because the company had not complied with the general conditions of the certificate as required by the *Canadian Aviation Regulations*, sections 702.02 and 703.02. No request to review the Minister's decision was filed with the registrar of the Transportation Appeal Tribunal of Canada, which request would have had to be filed with the Tribunal no later than January 17, 2007, at 11:59 p.m. Documents have since been submitted by Jacques Lévesque with regard to certain issues, in order to meet the conditions for reinstatement of the certificate. However, on March 22, 2007, he was notified by telephone that Transport Canada had reviewed the file and that a notice of cancellation of the air operator certificate was being prepared and would soon be served on him. The suspension is still in effect.

26. On April 25, 2007, 2431-9154 Québec Inc. (Sept-Îles Aviation Enr.), of which Jacques Lévesque was a principal, still did not comply with section 103.03 of the *Canadian Aviation Regulations*, requiring that the company return the Canadian aviation document, as stipulated in the notice of suspension of the air operator certificate dated December 7, 2006.

27. On July 16, 1998, an inspection finding was issued stating that the maintenance control system was ineffective, namely that aircraft registered as C-GCXF had not been checked against airworthiness directive AD97-01-13.

28. On April 30, 2002, an inspection finding was issued stating that the maintenance control system was ineffective, namely that aircraft registered as C-GUQM had not been maintained in accordance with the approved maintenance schedule no. Q0549.

29. In the course of a regulatory audit conducted in September and October 2003, inspection findings were issued stating that the maintenance control system was ineffective, specifically:

- aircraft registered as C-GCXF had not been maintained in accordance with the approved maintenance schedule no. Q0628R4.

- aircraft registered as C-GNEV had not been maintained in accordance with the approved maintenance schedule no. Q0549 and airworthiness directives AD98-02-08, AD94-06-09 and AD93-11-11 had not been checked.

- aircraft C-GUQM had not been checked against airworthiness directives AD89-24-09, AD85-05-02 and AD78-16-06.

30. On October 26, 2004, an inspection finding was issued stating that the maintenance control system was ineffective, namely that aircraft registered as C-GCXF had not been maintained in accordance with the approved maintenance schedule no. Q0628R4, and airworthiness directive AD97-26-16 had not been checked.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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