

Federal Court



Cour fédérale

Date: 20211008

Docket: T-1159-19

Citation: 2021 FC 1056

[ENGLISH TRANSLATION]

Montréal, Quebec, October 8, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

JULES LÉONARD

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of Transport Canada’s decision dated May 31, 2019, by which the Minister of Transport [Minister] suspended the medical certificate number 275780 of the applicant, Mr. Jules Léonard [Mr. Léonard], as a result of Mr. Léonard’s failure [TRANSLATION] “to comply with the Minister’s request to provide additional medical

information necessary to determine his physical and mental fitness”. Mr. Léonard is seeking judicial review of that decision.

[2] In short, Mr. Léonard has not satisfied me that it was unreasonable for the Minister to rely on the medical report that questioned his mental state and recommended that Mr. Léonard undergo a psychiatric examination, or that it was unreasonable for the Minister to suspend Mr. Léonard’s medical certificate because he failed to undergo the recommended psychiatric examination. For the reasons that follow, I will be dismissing the application.

II. Facts

[3] Mr. Léonard is representing himself. He had counsel in the case; however, Mr. Léonard claimed during the hearing before me that the counsel was sabotaging his case, particularly with respect to his right to procedural fairness, and that he was part of the conspiracy against him because he was in cahoots with Transport Canada and the health professionals who collaborate with them. No complaint was made to the Barreau against the counsel because, according to Mr. Léonard, this would only have exacerbated the problem.

[4] Mr. Léonard holds a Canadian Aviation Document Booklet, number A165467, which contains three licences, namely Commercial Pilot—Helicopter CH275780, Private Pilot—Aeroplane PA275780 and Glider Pilot GG275780. He alleges that he was the victim of one or more assassination attempts, but it is not clear exactly what happened or when. The attempts are alleged to have occurred in the course of Mr. Léonard’s work while he was flying a helicopter.

[5] What is certain is that on Friday, April 20, 2018, during his meeting with his medical examiner, Gérard Grenon [Dr. Grenon], and following the medical examination required to renew his medical certificate to allow him to continue to fly as a professional pilot, Mr. Léonard allegedly reported the criminal acts targeting him to Dr. Grenon.

[6] Dr. Grenon was initially prepared to declare Mr. Léonard mentally fit, but, as a result of this report, he appeared to change his mind and recommended in his supplementary notes that the renewal of Mr. Léonard's medical certificate be deferred so that a further examination could be conducted to determine whether Mr. Léonard was suffering from a disorder relating to his mental state; he was of the opinion that the opinion of a psychiatrist was necessary to determine Mr. Léonard's mental fitness to fly. In his medical report, after noting an [TRANSLATION] "acute state of stress", Dr. Grenon stated:

[TRANSLATION]

Says he was the victim of a premeditated assassination attempt when he was made to do "long line" training in the dark and another company sabotaged his tail rotor. We spoke to his MD, Dr. Yvan Lavoie and he agreed to a psychiatric consultation: paranoid delirium???

[7] The report dated April 20, 2018, refers to a supplementary document attached to the report in which Dr. Grenon indicates that he contacted Mr. Léonard's family physician, Dr. Yvan Lavoie [Dr. Lavoie], on Monday, April 23, 2018. Dr. Grenon's supplementary notes report his discussion with Dr. Lavoie as follows:

2018-04-23 :

[TRANSLATION]

- A) Call to Dr. Yvan Lavoie, who has known the gentleman for 2-3 years and is aware of the steps he has taken. After explanations and discussion, he agreed to meet with Mr. Léonard and to refer him to a psychiatrist in order to shed light on his mental state, that is, to find out whether Mr. Léonard is showing signs of paranoid delusion, or if the actions against his person are real and were intended to put him in a condition that led to an aircraft accident.
- B) Mr. Léonard was recalled later. He became animated, but finally agreed to be seen by his doctor and a specialist, which may unlock a truth that will be known by TC.

In our opinion, we believe that a psychiatric opinion will reveal whether Mr. Léonard's statements are part of a real conflict with his ex-employers or whether he is suffering from another mental disorder. We wish to note that our description of these statements was made to the best of our knowledge, on the basis of the information we gathered.

[Emphasis added.]

[8] On June 18, 2018, Mr. Léonard received a letter from Transport Canada advising him that he had 60 days to provide an additional expert assessment, namely, a report from a specialist regarding the possibility of a thought disorder. Mr. Léonard was thus advised that failure to do so within this time limit would result in the administrative suspension of his medical certificate (necessary to exercise the right to fly).

[9] In the months that followed, Mr. Léonard and his counsel at the time contacted Transport Canada regarding this request, without providing a specialist's report as requested by the Department. In fact, rather than meeting with a psychiatric specialist as requested by Transport Canada, Mr. Léonard met with another medical examiner, Dr. Suzanne Trempe [Dr. Trempe], on September 20, 2018, and on April 11, 2019, in order to obtain an assessment other than that of Dr. Grenon, in whom he no longer had confidence.

[10] Following her medical examination, Dr. Trempe declared Mr. Léonard physically and mentally fit. Mr. Léonard returned to see Dr. Trempe the following year, on April 11, 2019, and following her medical examination, Dr. Trempe again declared Mr. Léonard physically and mentally fit.

[11] On May 31, 2019, Transport Canada suspended Mr. Léonard's medical certificate number 275780. He was advised that this suspension would remain in effect until the Minister received and reviewed the requested information from a specialist attesting to his mental fitness.

[12] On July 17, 2019, Mr. Léonard applied for judicial review of the May 31, 2019, decision that is before me today. However, on September 5, 2019, Mr. Léonard returned to the offices of Transport Canada to discuss the use of his pilot licence privileges, despite the administrative suspension of his medical certificate.

[13] After reviewing the record on September 12, 2019, the Minister decided to suspend Mr. Léonard's pilot licences "on the grounds that an immediate threat to aviation safety or security exists or is likely to occur" as a result of his behaviour. As stated in the notice of suspension, the suspension would remain in effect until the requested information from a specialist attesting to his mental fitness was received and reviewed. Mr. Léonard was also notified that he must immediately surrender the Canadian aviation document containing his Commercial Pilot—Helicopter, Private Pilot—Aeroplane and Glider Pilot licences in file 275780.

[14] On September 24, 2019, Mr. Léonard appealed the September 12, 2019, decision to the Transportation Appeal Tribunal of Canada [Tribunal]; however, as of the date of this hearing, the Tribunal had not yet heard his appeal. This judicial review relates solely to the reasonableness of the May 31, 2019, decision suspending the medical certificate required for the pilot's licence. The suspension on the grounds of immediate threat as of September 12, 2019, is not at issue in this case.

III. Issues

[15] The Minister has proposed to frame the issues as follows:

- (a) What is the applicable standard of review?
- (b) Is judicial review of the decision dated May 31, 2019, moot?
- (c) Is the relief sought within the Federal Court's jurisdiction?
- (d) Was the Minister of Transport's decision dated May 31, 2019, reasonable?

[16] Mr. Léonard did not make submissions on the first three questions posed by the Minister. He also did not frame his arguments in the form of questions, but I believe that his arguments fall under the fourth question. I will therefore answer the fourth question.

IV. Statutory instruments

[17] A person wishing to fly an aircraft, such as an airplane, helicopter or glider, must meet the requirements set out in the *Canadian Aviation Regulations*, SOR/96-433 [Regulations], made pursuant to the *Aeronautics Act*, RSC 1985, c A-2:

Requirement to Hold a
Medical Certificate

404.03(1) No person shall exercise or attempt to exercise the privileges of a permit, licence or rating unless the person holds a valid medical certificate of a category that is appropriate for that permit, licence or rating, as specified in section 404.10.

...

Issuance, Renewal, Validity
Period and Extension of a
Medical Certificate

404.04(1) Subject to subsection (2) and subsection 404.05(1), the Minister shall issue or renew a medical certificate on receipt of an application therefor if

(a) where the applicant is applying for a medical certificate in connection with an application for a student pilot permit-aeroplane, pilot permit — recreational, pilot or student pilot permit — ultra-light aeroplane, a pilot licence — glider or student pilot permit — glider, the applicant has completed and submitted a medical

Obligation d'être titulaire
d'un certificat médical

404.03(1) Il est interdit à toute personne d'exercer ou de tenter d'exercer les avantages d'un permis, d'une licence ou d'une qualification, à moins qu'elle ne soit titulaire d'un certificat médical valide de la catégorie propre au permis, licence ou qualification, telle qu'elle est précisée à l'article 404.10.

...

Délivrance, renouvellement,
période de validité et
prolongation du certificat
médical

404.04(1) Sous réserve du paragraphe (2) et du paragraphe 404.05(1), le ministre délivre ou renouvelle un certificat médical sur réception d'une demande de délivrance ou de renouvellement, lorsque le demandeur satisfait à l'une ou l'autre des conditions suivantes :

a) dans le cas où il fait la demande d'un certificat médical en vue d'un permis d'élève-pilote — avion, d'un permis de pilote de loisir, d'un permis de pilote ou d'élève-pilote — avion ultra-léger, d'une licence de pilote — planeur ou d'un permis d'élève-pilote — planeur, il a rempli et présenté une déclaration médicale

<p><u>declaration, in accordance with the personnel licensing standards, that attests to the fact that the applicant is medically fit to exercise the privileges of the permit or licence that is applied for; or</u></p>	<p><u>conformément aux normes de délivrance des licences du personnel, attestant qu'il est physiquement et mentalement apte à exercer les avantages du permis ou de la licence demandé;</u></p>
<p><u>(b) in any case not referred to in paragraph (a), it is established, by means of a medical examination conducted by a physician referred to in section 404.16, that the applicant meets the medical fitness requirements specified in the personnel licensing standards.</u></p>	<p><u>b) dans les cas autres que ceux visés à l'alinéa a), il est démontré, au moyen d'un examen médical fait par un médecin visé à l'article 404.16, que le demandeur répond aux exigences relatives à l'aptitude physique et mentale précisées dans les normes de délivrance des licences du personnel.</u></p>
<p>...</p>	<p>...</p>
<p>Medical Certificate Requirements for Personnel Licences</p>	<p>Exigences relatives au certificat médical pour les licences du personnel</p>
<p>404.10(1) A Category 1 medical certificate is required for the following licences:</p>	<p>404.10(1) Un certificat médical de catégorie 1 est exigé pour les licences suivantes :</p>
<p>(a) <u>commercial pilot licence — aeroplane or helicopter;</u></p>	<p>a) <u>licence de pilote professionnel — avion ou hélicoptère;</u></p>
<p>(b) multi-crew pilot licence — aeroplane;</p>	<p>b) licence de pilote en équipage multiple — avion;</p>
<p>(c) airline transport pilot licence — aeroplane or helicopter; and</p>	<p>c) licence de pilote de ligne — avion ou hélicoptère;</p>
<p>(d) flight engineer licence.</p>	<p>d) licence de mécanicien navigant.</p>

(2) A Category 1 or 2 medical certificate is required for an air traffic controller licence.	(2) Un certificat médical de catégorie 1 ou 2 est exigé pour la licence de contrôleur de la circulation aérienne.
(3) A Category 1 or 3 medical certificate is required for the following permits, licences and ratings:	(3) Un certificat médical de catégorie 1 ou 3 est exigé pour les permis, licences et qualifications suivants :
(a) student pilot permit — helicopter;	a) permis d'élève-pilote — hélicoptère;
(b) pilot permit — gyroplane;	b) permis de pilote — autogire;
(b.1) student pilot permit — gyroplane or balloon;	b.1) permis d'élève-pilote — autogire ou ballon;
(c) <u>private pilot licence — aeroplane or helicopter;</u>	c) <u>licence de pilote privé — avion ou hélicoptère;</u>
(d) pilot licence — balloon;	d) licence de pilote — ballon;
(e) flight instructor rating — glider; and	e) qualification d'instructeur de vol — planeur;
(f) flight instructor rating — ultra-light aeroplane.	f) qualification d'instructeur de vol — avion ultra-léger.
(4) A Category 1, 3 or 4 medical certificate is required for the following permits and licences:	(4) Un certificat médical de catégorie 1, 3 ou 4 est exigé pour les permis et licences suivants :
(a) student pilot permit - aeroplane;	a) permis d'élève-pilote — avion;
(b) pilot permit — recreational;	b) permis de pilote de loisir;
(c) student pilot permit or pilot permit — ultra-light aeroplane;	c) permis d'élève-pilote ou de pilote — avion ultra-léger;
(d) student pilot permit — glider; and	d) permis d'élève-pilote — planeur;

(e) pilot licence — glider.

e) licence de pilote —
planeur.

Minister's Assessment

Évaluation par le ministre

404.11 (1) The Minister shall assess any medical reports submitted pursuant to paragraph 404.17(b) to determine whether an applicant for the issuance or renewal of a medical certificate meets the medical fitness requirements set out in the personnel licensing standards that are necessary for the issuance or renewal of the medical certificate.

404.11(1) Le ministre doit évaluer les rapports médicaux présentés en application de l'alinéa 404.17b) pour déterminer si la personne qui demande la délivrance ou le renouvellement d'un certificat médical satisfait aux exigences relatives à l'aptitude physique et mentale qui sont précisées dans les normes de délivrance des licences du personnel et qui sont nécessaires pour la délivrance ou le renouvellement du certificat médical.

(2) The Minister shall, by personal service or by registered mail sent to the applicant at the latest known address of the applicant, immediately

(2) Le ministre doit immédiatement, par signification à personne ou courrier recommandé à la dernière adresse connue du demandeur :

(a) notify the applicant of the result of an assessment, and

a) aviser le demandeur des résultats de l'évaluation;

(b) in the case of an application for the renewal of a medical certificate, inform the applicant that the Minister will, no earlier than 30 days after the date that the applicant receives the notification, make a decision pursuant to subsection 7.1(1) of the Act, based on the result of the assessment.

b) dans le cas d'une demande de renouvellement d'un certificat médical, informer le demandeur qu'il rendra, en application du paragraphe 7.1(1) de la Loi, une décision fondée sur les résultats de l'évaluation, après l'expiration de 30 jours suivant la date de réception de l'avis par le demandeur.

<p>Reconsideration of Assessment</p> <p>404.12(1) An applicant for the renewal of a medical certificate who is assessed by the Minister as not meeting the requirements referred to in subsection 404.11(1) may, within 30 days after the date that the applicant receives the notification referred to in subsection 404.11(2),</p> <p>(a) request the Minister to reconsider the assessment; and</p> <p>(b) submit additional information to the Minister regarding the medical fitness of the applicant in support of the request.</p> <p>(2) Where the Minister is requested to reconsider an assessment pursuant to subsection (1), the Minister shall</p> <p>(a) take into consideration any additional information regarding the medical fitness of the applicant; and</p> <p>(b) immediately notify the applicant in writing of the result of the reconsideration of the assessment.</p> <p>[Emphasis added.]</p>	<p>Révision de l'évaluation</p> <p>404.12(1) La personne qui demande le renouvellement d'un certificat médical et qui, selon l'évaluation du ministre, ne satisfait pas aux exigences du paragraphe 404.11(1) peut, dans les 30 jours suivant la date de réception de l'avis visé au paragraphe 404.11(2) :</p> <p>a) demander au ministre de réviser l'évaluation;</p> <p>b) soumettre au ministre des renseignements supplémentaires relatifs à son aptitude physique et mentale à l'appui de sa demande.</p> <p>(2) Lorsqu'une demande de révision d'une évaluation lui est soumise en application du paragraphe (1), le ministre doit :</p> <p>a) examiner les renseignements supplémentaires relatifs à l'aptitude physique et mentale du demandeur;</p> <p>b) aviser immédiatement par écrit le demandeur des résultats de la révision de l'évaluation.</p> <p>[Je souligne.]</p>
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[18] As noted above, in order to obtain a medical certificate, the applicant must meet the

Personnel Licensing and Training Standards Respecting Medical Requirements [Standards] (see

subsection 404.01(2) of the Regulations, which refers to the Standards). According to these standards:

Division II - Medical certificate

...

424.04(2) Medical Examination

(a) Every applicant for a medical certificate or revalidation thereof shall undergo a medical examination by a CAME.

(b) Every applicant shall, at the time of the medical examination:

(i) sign a declaration provided by the CAME stating whether the applicant has previously undergone a medical examination in connection with an application for a medical certificate or revalidation thereof and, where applicable, provide a statement that sets out the results of the most recent such examination;

(ii) answer all of the CAME's questions that are pertinent to the assessment of the applicant's medical fitness;

(iii) give written authorization for the disclosure of medical information to a physician named by the applicant; and

Section II – Certificat médical

...

424.04(2) Examen médical

a) Le demandeur d'un certificat médical ou d'un renouvellement de celui-ci doit subir un examen médical effectué par un MEAC.

b) Au moment de l'examen médical, le demandeur doit :

(i) signer une déclaration produite par le MEAC indiquant s'il a déjà subi un examen médical en vue d'obtenir la délivrance ou le renouvellement d'un certificat médical et, le cas échéant, produire une déclaration qui fait état des résultats de son plus récent examen;

(ii) répondre à toutes les questions du MEAC qui sont pertinentes à l'évaluation de son aptitude physique et mentale;

(iii) autoriser par écrit la communication de renseignements médicaux à un médecin qu'il a nommé; et

(iv) undergo any other examinations or tests that are required by the CAME in order to assess the applicant's medical fitness.

...

Division IV - Medical fitness

...

424.12 Reconsideration of Assessments

(1) An applicant assessed unfit at the regional level may submit additional reports from Civil Aviation Medical Examiners, specialist examinations and laboratory reports for reconsideration of the assessment. The applicant may, in addition, request the Regional Aviation Medical Officer, or the Aviation Medical Officer to forward all reports and findings to the Chief, Clinical Assessment for presentation to the Aviation Medical Review Board.

(2) Appeal may be made to the Civil Aviation Tribunal where:

(iv) subir tout autre examen ou test exigé par le MEAC pour évaluer son aptitude physique et mentale.

...

Section IV - Aptitude physique et mentale

...

424.12 Révision de l'évaluation

(1) Lorsqu'un demandeur a été déclaré inapte à l'échelon régional, il peut, s'il le désire, présenter des rapports supplémentaires de médecins-examineurs de l'aviation civile, des rapports d'examens par des spécialistes et des résultats de tests de laboratoire afin que l'on procède à une nouvelle évaluation de son cas. De plus, le demandeur peut demander à l'agent médical régional de l'aviation ou à l'agent médical de l'aviation d'envoyer tous les rapports et toutes les constatations au chef de l'Évaluation clinique pour présentation au Comité de révision médicale de l'aviation.

(2) Un appel peut être présenté devant le Tribunal de l'aviation civile dans les cas suivants :

(a) a permit, licence or medical certificate holder is assessed as being unfit to exercise the privileges of his licence, permit or certificate; or

a) si le titulaire d'un permis, d'une licence ou d'un certificat est déclaré inapte à exercer les avantages de son permis, sa licence, ou de son certificat médical; ou

(b) a permit, licence or medical certificate is refused renewal.

b) s'il y a refus de renouveler un permis, une licence ou un certificat médical.

[Emphasis added.]

[Je souligne.]

[19] In fact, Mr. Léonard must meet the physical and mental requirements of medical categories 1 and 3 of Appendix II to the Standards, including the requirements relating to the nervous system:

Nervous System

Système nerveux

1.3 The applicant shall have no established medical history or clinical diagnosis which, according to accredited medical conclusion, would render the applicant unable to exercise safely the privileges of the permit, licence or rating applied for or held, as follows:

1.3 Le demandeur ne présentera ni antécédents médicaux ni diagnostic clinique qui, selon des conclusions de médecins agréés, le rendraient incapable d'exercer en toute sécurité les avantages du permis, de la licence ou de la qualification demandé ou détenu et qui révèlent :

(a) psychosis or established neurosis;

a) une psychose ou une névrose reconnues;

(b) alcohol or chemical dependence or abuse;

b) l'alcoolisme ou la toxicomanie;

(c) a personality or behaviour disorder that has resulted in the commission of an overt act;

c) des troubles de la personnalité, ou des anomalies de comportement qui ont entraîné un acte manifeste;

(d) other significant mental abnormality	d) une autre anomalie mentale importante.
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[20] The Minister must review the medical reports submitted to determine whether the person seeking renewal of a medical certificate meets the physical and mental fitness requirements specified in the Standards (Regulations, section 404.11).

[21] Following the review, the Minister may renew the medical certificate or, if not satisfied that the physical or mental fitness requirements have been met, may request further medical tests or examinations of Mr. Léonard before renewing the medical certificate or may decide to suspend the medical certificate if Mr. Léonard fails to comply with that the request:

Issuance, Renewal, Validity Period and Extension of a Medical Certificate	Délivrance, renouvellement, période de validité et prolongation du certificat médical
...	...
404.04(2) The Minister	404.04(2) Le ministre :
(a) may request an applicant for the issuance or renewal of a medical certificate to undergo, before a specified date, any medical tests or examinations that are necessary to determine whether the applicant meets the medical fitness requirements specified in the personnel licensing standards;	a) peut demander que, avant une date prévue, la personne qui demande la délivrance ou le renouvellement d'un certificat médical subisse les tests ou examens médicaux nécessaires pour déterminer si elle répond aux exigences relatives à l'aptitude physique et mentale précisées dans les normes de délivrance des licences du personnel;
(b) shall not issue or renew a medical certificate until the applicant has undergone all of	b) ne peut délivrer ou renouveler un certificat médical avant que le

the tests and examinations requested by the Minister pursuant to paragraph (a); and

demandeur n'ait subi les tests ou examens demandés par le ministre en application de l'alinéa a);

(c) may suspend, or refuse to issue or renew, the applicant's medical certificate if the applicant fails to comply with the request referred to in paragraph (a) before the specified date.

c) peut suspendre, ou refuser de délivrer ou de renouveler, le certificat médical du demandeur si celui-ci ne se conforme pas à la demande visée à l'alinéa a) avant la date prévue.

V. Analysis

A. *Preliminary matters*

[22] At the outset of the hearing, Mr. Léonard sought leave of the Court to file documents and supplementary affidavits with amendment to the Notice of Application, correcting, in his view, certain errors in the affidavits that he had filed with the Court in January 2020, but which he subsequently withdrew. Given that the Minister, after discussion, agreed to withdraw his initial objection to the filing of the “supplementary” affidavits and documents by Mr. Léonard subject only to the issue of relevance, I granted leave to file them on December 10, 2020.

[23] In addition, in order to focus on the real issue in this case, it is preferable that I also discuss the questions of whether this application is moot and whether the relief sought by Mr. Léonard is within the jurisdiction of the Federal Court; these are preliminary issues.

[24] On the first issue, the Minister cites *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*], in support of his contention that the present application for judicial review

has been moot since the Minister's decision of September 12, 2019, to suspend Mr. Léonard's pilot licences on the basis of an immediate threat that exists or is likely to occur.

[25] According to that decision, an application is moot "if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties" (*Borowski* at p 353).

[26] According to the Minister, the suspension of the pilot licences on the basis of an immediate threat that exists or is likely to occur was based on Mr. Léonard's refusal to provide the documentation necessary to determine his mental fitness in accordance with the medical requirements of the Regulations and on [TRANSLATION] "his conduct following the May 31, 2019 suspension". Since the licences themselves are now suspended, the question of the reasonableness of the administrative suspension of the medical certificate for failure to provide the supplementary medical report by May 31, 2019, would now be purely academic.

[27] The Minister adds that if this application were to succeed, there could be a conflict between the Minister's new decision and the decision of the Tribunal, to which an appeal has been filed against the September 12, 2019, decision. Lastly, the Minister submits that there are no questions of general importance raised by this application for judicial review and that judicial economy militates in favour of rejecting the exercise of discretion.

[28] I am unable to accept the Minister's argument. Assuming that the Tribunal has not yet rendered its decision, I doubt that this application is moot. Indeed, if Mr. Léonard were to

succeed before the Court, on the basis that the suspension of his medical certificate was unreasonable, that decision would certainly assist the Tribunal in assessing the reasonableness of the suspension of Mr. Léonard's licences. The suspension of Mr. Léonard's licences seems to me to be intrinsically linked to the suspension of his medical certificate (although it could also be the result of misrepresentations in subsequent medical assessments before Dr. Trempe). Mr. Léonard's rights would therefore certainly be affected by the Court's decision.

[29] On the issue of the Court's jurisdiction, Mr. Léonard is seeking the following relief:

[TRANSLATION]

ALLOW the applicant's application for judicial review,

QUASH the decision and stop any retaliation, and then remand the matter for judgment with directions for moral, pecuniary and punitive damages equivalent to the years of service lost or as it finds appropriate.

RETURN the matter to Transport Canada for adjudication after properly conducting a thorough investigation without attempting to obstruct the process of investigating the events originally reported by the whistleblower that compromised the safety of the applicant in the performance of his or her duties, as well as making restitution for the harm caused,

OR, if applicable

REFER the matter to the said Transportation Tribunal for adjudication on such directions as it finds appropriate,

MAKE such order as it deems appropriate,

WITH costs.

[30] I agree with the Minister that most of the relief sought is outside the Federal Court's jurisdiction. First, the present application can only relate to the decision of May 31, 2019, to the

exclusion of the decision of September 12, 2019 (section 302 of the *Federal Courts Rules*, SOR/98-106).

[31] Moreover, the powers of the Federal Court in judicial review proceedings are limited by subsection 18.1(3) of the *Federal Courts Act*, RSC 1985, c F-7; it does not, for example, have the power to award damages (*Canada (Attorney General) v TeleZone Inc.* 2010 SCC 62 at para 24, and *Lavoie v Canada (Attorney General)*, 2007 FC 1251 at para 45).

[32] That said, some of the other measures sought by Mr. Léonard, such as quashing the decision and referring the matter back to Transport Canada, are different. There is, therefore, some room for discussion in this case.

B. *Merits of the case*

(a) What is the applicable standard of review?

[33] In my view, there is no doubt that the applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Tesluck v Canada (Attorney General)*, 2020 FC 1041). Indeed, the Minister's decision to seek additional medical testing is based on facts and policies governing the Canadian aviation industry. Moreover, there is nothing to suggest to me that the matters at issue fall within any of the exceptions to the presumption of reasonableness enshrined in *Vavilov*.

[34] The analytical framework for reviewing the reasonableness of a decision was restated in *Vavilov*:

[82] Reasonableness review aims to give effect to the legislature’s intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law: see *Dunsmuir*, at paras. 27-28 and 48; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 10; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3, at para. 10.

[83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171, that, “as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did”: at para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.

[35] In this case, the Minister must balance his [TRANSLATION] “overriding” duty to ensure the safety of the public with the personal interests of individuals wishing to practise their profession, such as Mr. Léonard. The suspension of the medical certificate is one of the measures by which the Minister ensures public safety.

[36] The Minister’s expertise must also be taken into account in weighing the reasonableness of his decision (*Vavilov* at paras 31, 93 and 119).

(b) Was the Minister of Transport's decision dated May 31, 2019, reasonable?

[37] According to the Minister, his decision not to renew Mr. Léonard's medical certificate was [TRANSLATION] "understandable, well-founded and falls within the range of possible, acceptable outcomes that can be justified having regard to the facts and law", in particular with respect to his obligations [TRANSLATION] "with respect to air safety and the public and his obligation to ensure the physical and mental fitness of pilots".

[38] To explain the reasonableness of his decision, the Minister pointed out the considerable facts that justify it: primarily, the Minister made this decision because of Mr. Léonard's refusal to submit to the psychiatric examination that Dr. Grenon had recommended following his interview with Mr. Léonard on April 20, 2018.

[39] In that interview, Dr. Grenon had determined that Mr. Léonard was too emotionally disturbed to fly an aircraft and had recommended a psychiatric examination to determine whether some of the events Mr. Léonard had recounted (the assassination attempts) were real or were part of a paranoid delusion.

[40] Instead of submitting to the required psychiatric examination, and after receiving 60 days' notice from the Minister that failure to do so would result in the suspension of his medical certificate, Mr. Léonard instead submitted to two medical examinations by another civil aviation medical examiner during which he allegedly made false statements.

[41] Concluding that these two medical reports did not constitute a specialist's report on the possibility of a thought disorder, the Minister decided, pursuant to subsection 404.04(2)(b) of the Regulations, not to renew Mr. Léonard's medical certificate. Pursuant to the same Regulations, the Minister decided to suspend the medical certificate until Mr. Léonard provided him with a report that met the requirements of the report that had been requested.

[42] In contrast, Mr. Léonard criticized the Minister for not having considered in his decision the two reports from the medical examinations conducted by Dr. Trempe. He also attacked Dr. Grenon's professional judgment, accusing him of, among other things, having reported erroneous elements in his report and having acted in bad faith in the course of his examination.

[43] Mr. Léonard argued that Dr. Grenon's report is a false medical report. He also claimed that the "long line" training he was forced to undergo by his employer was illegal, that his denunciations to Dr. Grenon that his employer had committed *Criminal Code* offences were related to his attempted assassination, and that Transport Canada and Dr. Grenon covered up his denunciations and even attempted to implicate Mr. Léonard's former counsel. Thus, according to Mr. Léonard, Dr. Grenon had, in a deliberate manner, inaccurately transcribed the assassination attempts that he had described to him in order to make him look like a person suffering from mental disorders. Transport Canada thus found a convenient way to muzzle Mr. Léonard by suspending his medical certificate on false grounds.

[44] Mr. Léonard is all the more convinced of this because Dr. Grenon allegedly admitted that his entries were [TRANSLATION] "all wrong" and invited Mr. Léonard to change them when he

visited him a second time, a few days after the first visit, to verify the entries in the medical report. In addition, Mr. Léonard contends that Dr. Grenon contacted his family physician, Dr. Lavoie, three days after his first visit, on April 23, 2018, without his consent and thus added confidential information to his report.

[45] From what I can see, Dr. Lavoie's notes confirm that Dr. Grenon did call him because he found Mr. Léonard [TRANSLATION] "agitated and anxious, much more than usual," and wanted to discuss this with him. These notes mention the possibility of having Mr. Léonard undergo a psychiatric examination.

[46] Mr. Léonard believes that Dr. Grenon therefore tried to cover up his denunciation of criminal acts by attempting to have him [TRANSLATION] "psychiatrized". In fact, according to Mr. Léonard, another indication of Dr. Grenon's bad faith is that he indicated in his report [TRANSLATION] "acute stress", whereas the electrocardiogram that Mr. Léonard had taken just before indicated a normal blood pressure. Mr. Léonard argues that the Minister, by withdrawing his medical certificate and pilot's licences, is seeking to intimidate him by depriving him of his livelihood.

[47] Mr. Léonard denied that he told Dr. Grenon what he wrote in his medical report. It is difficult to see how Dr. Grenon's medical report contained false information when Mr. Léonard repeated virtually the same denunciation that he allegedly made to Dr. Grenon in his affidavit filed with the Court. In his affidavit, Mr. Léonard stated:

[TRANSLATION]

Claire knew that I would make my denunciation today, about these criminal acts for which I was targeted. Referring to that premeditated attempted attack subtly disguised as an accident, while I was away at the fires with an unapproved long line. And also, during an unplanned and unjustified specialized training the day before my vacation, conducted late in the day, or (sic) I even lost my references during the exercise. ... and then with another employer with whom my former boss had business ties, for our SLCs the previous year, from which (sic) I had numerous retaliations that had clearly been ordered, the last of which, using (the falsely damaged tail rotor tactic), in order to embarrass a captain.

[48] The material facts that Mr. Léonard related to Dr. Grenon are also set out in the arbitral award dated December 7, 2020, between Mr. Léonard and his former employer (*Jules Léonard v Vortex Helicopters Inc.*, 2020 CanLII 96895).

[49] Although I invited Mr. Léonard to identify for me what information was falsely recorded or exaggerated by Dr. Grenon in his report, Mr. Léonard simply stated that all the elements were false and that the discussion with Dr. Grenon had not been [TRANSLATION] “heated” as was indicated in his medical report.

[50] I found it difficult to believe Mr. Léonard in his remarks about Dr. Grenon’s entries in his supplementary notes. For example, when I review the elements of Dr. Grenon’s supplementary notes, I see that he noted that Mr. Léonard had spoken to the Sûreté du Québec about attempts [TRANSLATION] “to eliminate him”, whereas Mr. Léonard states that Dr. Grenon only [TRANSLATION] “assumed” this information, which did not come from him. However, I find it

difficult to understand how Dr. Grenon would have known that Mr. Léonard had met with the Sûreté du Québec if Mr. Léonard had not told him.

[51] Mr. Léonard is thus attacking Dr. Grenon's professional judgment. However, Dr. Grenon's competence is not a matter for the Minister of Transport, but rather for the Collège des Médecins, and Mr. Léonard has never spoken to the Collège des Médecins about Dr. Grenon. Specifically, it is difficult for me to see the medical error involved. Furthermore, I have very little detail as to the discrepancy between what Mr. Léonard said to Dr. Grenon and what Dr. Grenon wrote in his medical report. It is difficult for me to comment on Dr. Grenon's professional abilities in this context. Mr. Léonard's suspicions are not sufficient in my view to establish that Dr. Grenon's recommendation for psychiatric evaluation was based on false transcripts. Rather, it appears from the evidence in the record that Dr. Grenon accurately transcribed what Mr. Léonard had said (to the best of his understanding).

[52] Mr. Léonard argued that Dr. Grenon's report was of no legal value because he was required to sign it before Dr. Grenon completed Part B of the report, the medical questionnaire. However, whether or not the process was properly followed does not affect the validity of Dr. Grenon's conclusions and recommendations. Mr. Léonard raises the fact that in Part B of the April 20, 2018, report, Dr. Grenon indicated that Mr. Léonard was taking the drug Imovane. Mr. Léonard contends that this is untrue and denies knowledge of this medication. However, Mr. Léonard admits to taking medications that he did not name, but he is adamant that it was not Imovane. In any event, whether or not the specific medication identified by Dr. Grenon is correct, it does not appear to me to have had any impact on the fact that Transport Canada

requested that Mr. Léonard undergo a psychiatric examination on June 18, 2018, which Mr. Léonard refused to do.

[53] Mr. Léonard has not satisfied me that Transport Canada's June 18, 2018, request for further expert assessment was in any way unreasonable; certainly, Mr. Léonard never sought judicial review of the June 18, 2018, request.

[54] More importantly, Mr. Léonard does not explain why the Minister would have had reason to doubt Dr. Grenon's medical assessment. After all, it is the Minister's decision of May 31, 2019, that the Court must review, not Dr. Grenon's report or the June 18, 2018, request. As for the allegations of conspiracy and cover-up against Mr. Léonard, there is simply no evidence to support any of this.

[55] Since we know almost nothing about the alleged medical error at issue, it is difficult to determine why the Minister should have doubted Dr. Grenon's report and not considered it. Once the Minister accepted Dr. Grenon's report and considered the recommendation for a psychiatric examination to be correct, he was within his rights to suspend Mr. Léonard's medical certificate on the condition that Mr. Léonard undergo this examination.

[56] Mr. Léonard then presented me with both of Dr. Trempe's reports and explained that the process she had followed was more appropriate because she had him sign the report after she had completed her full examination. However, again, this has little or nothing to do with why Transport Canada suspended his medical certificate.

[57] Mr. Léonard argues that Transport Canada should have accepted both of Dr. Trempe's reports to satisfy its legal obligation. However, it should be noted that the May 31, 2019, letter specifically states that it was to be provided to the medical reviewer consulted by Mr. Léonard. Mr. Léonard evaded my question as to whether he had provided Dr. Trempe with a copy of the May 31, 2019, Transport Canada decision, but insisted that he had not acted on the June 18, 2018, request because it was illegitimate, and that subsection 404.12(1)(b) of the Regulations and subsection 424.12(1) of the Standards gave him the right to consult a medical examiner of his choice, other than Dr. Grenon.

[58] I note that the examination before Dr. Grenon was only deferred pending the report of the psychiatric specialist. In any event, Mr. Léonard's argument is without merit. Subsection 404.12(1)(b) of the Regulations and subsection 424.12(1) of the Standards did not apply to Mr. Léonard as he had not been declared unfit under subsection 404.11(1) of the Regulations at the time he went to see Dr. Trempe. If Mr. Léonard had been declared unfit to exercise the benefits of his medical certificate, he would have had a right of appeal to the Civil Aviation Tribunal (subsection 424.12(2) of the Standards).

[59] In addition, Mr. Léonard argued before me that he did not undergo a psychiatric examination because the whole examination system was flawed and medical professionals were part of the conspiracy, that his former counsel was in cahoots with Transport Canada to force his hand and go to a psychiatrist who would have prepared another false report, and that he was [TRANSLATION] "not foolish enough to get involved in their schemes". When I asked him once again later in the hearing to explain why he felt this way about seeing a psychiatrist, he stated

that [TRANSLATION] “the scandal, the College of Physicians, the government mafia, we know about it”.

[60] Other than the concerns expressed by Mr. Léonard, I have no evidence to support his position. It seems to me that the claim made by Transport Canada in its letter of June 18, 2018, to obtain a report from a psychiatric specialist was not so demanding and acting on it might have allowed Mr. Léonard to retain his medical certificate and licences. Instead, Mr. Léonard made the effort to go to another medical examiner, Dr. Trempe, specifically to avoid seeing a psychiatrist. The fact remains that Mr. Léonard did not meet Transport Canada’s requirements to retain his medical certificate.

[61] Lastly, Mr. Léonard argues that the May 31, 2019, letter indicates that Transport Canada had not received any medical reports, although both of Dr. Tempe’s reports had been sent to the Department. I reject Mr. Léonard’s view. The May 31, 2019, letter specifically referred to the request for an additional expert assessment in the June 18, 2018, letter—a psychiatric evaluation. Mr. Léonard did not respond to Transport Canada’s request; Dr. Trempe’s reports do not meet that requirement.

[62] I am therefore of the view that Mr. Léonard has not provided any concrete evidence or argument to challenge the reasonableness of the Minister’s decision. For this reason, I am dismissing the application for judicial review.

JUDGMENT in T-1159-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. Without costs.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1159-19

STYLE OF CAUSE: JULES LÉONARD v THE ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: DECEMBER 11, 2020

JUDGMENT AND REASONS: PAMEL J.

DATED: OCTOBER 8, 2021

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