Federal Court  Cour fédérale

Date: 20100607

Docket: T-707-08

Citation: 2010 FC 613

Ottawa, Ontario, June 7, 2010

PRESENT: The Honourable Justice Johanne Gauthier

BETWEEN:

LAWRENCE CLIFFORD TURNER

Applicant

and

MINISTER OF TRANSPORTATION (CANADA)

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Turner seeks judicial review of the decision refusing to "deliver" a Pilot Proficiency Check (PPC) for a King Air C-90/BE-90 type aircraft to him pursuant to paragraph 6.71(1)b) of the *Aeronautics Act*, R.S.C. 1985, c. A-2 (the *Act*). The impugned decision is a reconsideration of the respondent's initial decision that was set aside by the Transportation Appeal Tribunal of Canada (TATC) and referred back for reconsideration.

[2] For the reasons that follow the Court cannot agree that this decision should be set aside.

Background

[3] Mr. Turner has been a pilot since 1981 and has worked in commercial aviation as First Officer and Captain. He currently has a Captain's PPC for a J-32 type aircraft.

[4] On April 13, 2006, he was offered a position at Starlink Aviation Inc. (Starlink) as pilot-in-command of a passenger aircraft, a King Air C-90/BE-90 type aircraft (C-90). After a ground school exam, the applicant was trained on the aircraft by a flight instructor with Starlink, Mr. Guillaume Duchesneau, for 7.9 hours.

[5] On May 15, 2006, Mr. Duchesneau recommended the applicant for a flight test to obtain his PPC as pilot-in-command for this type of aircraft. The PPC only took place three weeks later on June 5, 2006 because of the weather and plane unavailability. It was conducted by a freelance approved check pilot (FACP) employed by Starlink. Mr. Duchesneau was in the cockpit acting as co-pilot during the test. He was present during the initial briefing as well as the debriefing after the test.

[6] The flight test *per se* consisted of a take-off from the Pierre Elliott Trudeau International Airport, a number of flight manoeuvres, and a landing at Mirabel Airport and a return and landing at the Pierre Elliott Trudeau International Airport. During the flight test, Mr. Turner acted as pilot-in-command with Mr. Duchesneau sitting in the front seat next to him while the FACP sat on the first

seat behind the cockpit. The FACP could not plug his earphone because the cord was too short for this type of aircraft. Therefore, he was unable to communicate directly with the applicant and was providing his instructions through the intermediary of Mr. Duchesneau, who would then convey them to the applicant.

[7] During the flight test and while the plane was circling, the FACP requested that the applicant be given the control during a certain manoeuvre even though this was allegedly contrary to Starlink Standard Operating Procedure (SOPs). Mr. Turner was also asked to conduct a single-engine landing. After he landed, he reversed both engines and applied the brakes at maximum which caused the aircraft to stop within a short distance. This resulted in a mark of 1 for item 18 in the flight test report.

[8] Mr. Turner indicated that upon landing, he believed that the scenario ended and there was nothing in the Starlink SOPs against using such short distance braking procedure.

[9] This failing mark on this exercise normally should have put an end to the test but the FACP was not sure if Mr. Turner had chosen to do a quick stop procedure at the request of the Air Traffic Control or because of a situation he could not appreciate from where he sat without headphones. Thus, he proceeded to complete the PPC with a short oral test on checklists for a Rejected Take Off (RTO).

[10] Mr. Turner also got a mark of "1"[1]and automatically failed his RTO test, a memory exercise done in the cockpit after the aircraft was immobilized and the engines stopped. The scenario chosen was a RTO with an "engine fire on ground". The pilot must know by heart the lists of measures to be taken so that they may be executed immediately and without hesitation, if need be, in a real urgency situation and without the need to refer to any documentation.

[11] With respect to the RTO, Mr. Turner admitted that he did not provide the correct answer (he reversed the order of two items), and that despite being given up to three opportunities to correct himself, he did not do so because he was afraid that he would fail[2] and more particularly that the instructor would believe that he did not know his checklists that well.

[12] All this was discussed in Starlink's office after the test during a debriefing but the applicant was not immediately advised at that time that he had failed his PPC. He was notified only two days later by Starlink's Chief Pilot.

[13] Following the failure of this test, the applicant lost his job at Starlink. He filed a request for review of this decision with the TATC pursuant to section 6.72(4) of the *Act*. The TATC set aside the respondent's decision and sent it back for reconsideration.

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[1] The Approved Check Pilot Manual (ACP Manual) provides that when any individual sequence has been assessed "1", the PPC must receive a general assessment of "fail". The mark "1" corresponds to below standard sequence (paragraph 9.9.1 and 10.3.5 of the ACP Manual).

[2] See Testimony of Mr. Turner, questions 971, 1085-1089 of the transcript: Mr. Turner did not want to attract attention to his mistake.

[14] The respondent initiated the reconsideration process following the procedure described in the Civil Aviation Directive No. 34: Reconsideration of Civil Aviation Tribunal Decisions (the Directive)[3] by appointing Mr. Don Sherritt, Director, Standards for Civil Aviation Directorate of the Department of Transport Canada, as the authorized person to exercise the reconsideration authority pursuant to subsection 6.72(4) of the *Act*. In turn, Mr. Sherritt appointed three people to form a reconsideration panel (the Panel) namely, Daniel Slunder as Panel Chair and Mr. Serge Côté and Mr. Paul-Armand Houde as panel members.

[15] As the expertise of the Panel is in dispute, it is worth reviewing the details contained in the Supplementary Affidavit of Don Sherritt in that respect. At the time of reconsideration, Mr. Slunder was the Program Manager of the Approved Check Pilot Program (ACP) and Advanced Qualifications Programs at Transport Canada. Mr. Slunder developed and implemented programs to further improve the areas under his supervision, such as specialty courses for inspectors in approved check pilots, maintained the ACP procedures and policies manual and provided technical expertise and guidance on such issues to senior management, civil aviation staff members, and civil aviation authorities. He is also an experienced airplane pilot and has conducted several pilot PPCs and worked as a check pilot and training pilot for Transport Canada.

[16] The second member of the Panel, Mr. Serge Côté, is an experienced helicopter pilot who worked for Transport Canada as an helicopter inspector for commercial and business aviation as

[3] This Directive appears to have been put in place for reconsideration under sections 7(9) and 7.1(9) (which has been repealed) of the *Act* but it does not expressly mention that it applies to reconsideration following a decision under subsection 6.72(4) of the *Act*.

well as a flight training and examination specialist. As a flight training specialist, he oversees and conducts workshops for helicopter pilot examinor program, conducts flight testing for helicopter license and develops the helicopter flight test guide and flight training manual; as an examiner specialist, he also develops helicopter examination.

[17] Mr. Paul-Armand Houde, the last member of the Panel, is a flight training inspector for Transport Canada who has extensive experience as a training pilot. He is a Class I instructor for both airplane and helicopter. Throughout his career he has given aviation safety training to various provincial and federal departments and companies and has been involved in the development of flight test guides.

[18] In a letter dated December 12, 2006, the Chair of the Panel advised the applicant of his right to make representations or submissions to introduce any relevant information other than what had already been disclosed during the hearing before the TATC. Mainly, the applicant updated his file stating that he had now a Captain's PPC on J-32 aircraft, that he was competent and that the Minister should reinstate his PPC on the C-90.

[19] On May 29, 2007, the Panel recommended that the initial decision on the PPC be maintained and that the PPC carried out on June 5, 2006 be considered a failure. In coming to this conclusion, the Panel reviewed all the material that was before the TATC as well as the decision itself. It accepted that the lack of communication between the FACP and Mr. Turner could have had

an influence on his performance with respect to the landing and were satisfied that his performance deserved a higher mark. It recommended that the "1" be reassessed as a "2".

[20] However, in respect of the RTO (item 7), the Panel concluded that the communication issue, which in its view was the only thing that really went wrong during the test, had no impact whatsoever on Mr. Turner's failure to describe correctly the checklists. It noted that he did not use the opportunities given to him to correct himself mainly because of his "**stated attempt at second-guessing the ACP**". The Panel concluded that it did not believe that the assigned mark "1" should be overturned.

[21] Finally, the Panel also indicated that it did not agree with the TATC's views that the FACP did not follow the ACP Manual's recommendations and failed to create the professional and at least, neutral environment, which would have given Mr. Turner the opportunity to perform to the best of his ability.

[22] By letter dated February 13, 2008, Mr. Turner was provided with the Panel's report and invited to make representations. He advised Mr. Sherritt that he did not recognize the competence of the Panel and noted that they could not "administrate the evidences [sic] from TATC as [they] have done". He also said that "I have a hard time to understand the fabrication of evidences [sic] that was put forth in your recommendation. The decision of Me Fortier[4] is clear without any doubt, no matter what you have decided".

[4] Name of the member who issued the TATC's decision.

[23] Shortly thereafter, Mr. Turner was informed that Mr. Sherritt had accepted the recommendation of the Panel despite his comments in his letter. Mr. Sherritt mentions that Mr. Turner had not provided any basis to support his views that the Panel did not have the competence to look at this matter. He concluded that Mr. Turner failed the PPC of June 5, 2006.

[24] The Court is only concerned with the portion of the decision confirming the failing note in respect of the RTO.

[25] The TATC deals with this particular item at paragraphs 82 to 88 of its decision. At paragraphs 82 and 83, it mentions that:

> [82] The final factor of confusion concerns the questions Mr. Delbarre put to Mr. Turner about the procedure to be followed in the event of an RTO. This element of the exercise occurred after the aircraft was stabilized on the ground and the engines shut off.
>
> [83] According to Mr. Turner, this part of the test seemed to him to be a series of questions that was not part of the usual competency check scenario. In this regard, Mr. Turner did not hesitate to say he incorrectly answered Mr. Delbarre's questions but did not change his answers for fear of being given an assessment of "failed".

[26] All the other paragraphs (84 to 88) deal with exhibit M-4, which reproduces Starlink SOPs applicable to the C-90, incorporates SOPs applicable to the King Air C-100 aircraft. The TATC

found this situation unusual and did not accept the Minister's claim that this was simply a printing error.[5]

[27] In its conclusions, the TATC states that none of the participants in the test performed to the best of their ability.

[28] More particularly, Me Fortier refers to *Hatfield v. Canada (Minister of Transport)*, [2006] C.T.A.T.D. No. 19 (QL) (*Hatfield)* where the TATC noted that "**as experienced pilots** will know, there is nothing worst for a crew than trying to second guess what the instructor (or check pilot) wants" (my emphasis). He mentions that the "testimonies of Messrs. Duchesneau and Turner showed **in several instances** that the flight check exercise was carried out with no clear communication from the FACP, which **may** have led Mr. Turner to try and guess or anticipate the wishes or instructions of the FACP" (my emphasis).

[29] Again referring to *Hatfield*, he notes that it was important for **checkride** to create the neutral atmosphere that will enable the candidates to perform to the best of their ability. He finds that Mr. Turner did not have that opportunity and that "[t]his was confirmed more than once by the testimony of Mr. Duchesneau who stated that Mr. Turner had piloting skills superior to those he demonstrated on June 5, 2006".

[5] It is agreed that both aircrafts are very similar.

[30] The TATC after referring to the decision of another member of the TATC in *Grant v. Canada (Minister of Transport)*, [2006] C.T.A.T.D. No. 4 (QL) (*Grant*) concludes that "Mr. Turner's PPC […] was not carried out in an objective and fair manner and in accordance with the provisions of the ACP Manual."

[31] The self represented applicant[6] raises issues which can be summarized as follows:

1. Did the members of the Panel have the appropriate expertise?
2. Did the Panel (or the decision maker) breach procedural fairness or exceed its jurisdiction by reviewing the evidence and issuing recommendations that were contrary to the TATC's decision?
3. Is the decision under review reasonable?

Analysis

[32] With respect to question 2 above, the Court will apply the standard of correctness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 50.

[33] Whether the Panel had the required expertise is mostly a question of fact or at best a question of mixed fact and law. In either case, that question and the merits of the decision *per se* will be reviewed on the standard of reasonableness: *Bancarz v. Canada (Transport)*, 2007 FC 451, 157 A.C.W.S. (3d) 5 at paras. 27 to 29 (*Bancarz*). It is now well-established that there is no need to engage in a standard of review analysis when "the jurisprudence has already determined in a

[6] Mr. Turner was assisted by a person who appeared to be very knowledgeable about the facts and the arguments of the case. He consulted extensively this person during the hearing.

satisfactory manner the degree of deference to be accorded with regard to a particular category of question": *Dunsmuir* at para. 62.

Expertise

[34] As mentioned, when asked by the Minister's representative to comment on the report of the Panel, Mr. Turner raised the issue of competence but did not submit any evidence to support his claim.

[35] In his Memorandum of Fact and Law, Mr. Turner specifies that except for the Chair, the Panel members had no expertise in relation to the ACP program or any competence to conduct a PPC ride. Neither had worked with the ACP Manual.[7]

[36] Upon considering the Supplementary Affidavit of Mr. Don Sherritt filed in October 2009 to address such allegations, the Court is satisfied that Mr. Turner has failed to meet his burden of convincing the Court that there is a reviewable error in that respect. When asked by the Court during the hearing on what basis he said that Me Fortier was more competent than the Panel, it became even clearer that he had in fact little information about this. Certainly, there is no evidence that one needs to be a pilot on the C-90 aircraft to be able to assess the matters put before the TATC

[7] He also referred the Court to p. 802-803 of the Respondent's Record which, according to him, show that these persons were not competent.

and subsequently before the Panel. There is no evidence that the TATC member is a licensed pilot for any type of aircraft or has any personal experience or competence to conduct a PPC[8].

[37] The Court accepts the evidence of Mr. Sherritt that the Panel members he chose had the necessary technical expertise, had not been involved in this file before, and came from a region different from the region from which the case originated, as set out in the Directive for cases that fall within its application.

Questions of law and reasonableness of the decision

[38] First, it is worth noting that there has been no breach of procedural fairness of the type referred to in *Bancarz* (paras. 34-35) or *Sierra Fox Inc. c. Canada (Minister of Transport)*, 2007 FC 129, 308 F.T.R. 219 at para. 72 (*Sierra Fox*). Not only did the Panel seek representations from Mr. Turner before proceeding with its review but also Mr. Sherritt sent him a copy of the report of the Panel for comments before he made his decision.

[39] Thus, what Mr. Turner says is unfair is the fact that the Panel "re-administered" the evidence "when they were not present", failed to base its recommendation (and the Minister failed to base his decision) on the conclusions made by the TATC and that it added, created or misapprehended the evidence when it wrote that the FACP "did his best to prevent further delays by

[8] These comments do not mean or imply that such qualifications are required from TATC members. They are simply addressing the arguments raised during the hearing before me.

agreeing to conduct the test without being able to monitor communications, a decision he came to regret".

[40] Mr. Turner also says that the Panel misinterpreted the TATC's decision and wrongly focused on the lack of communication as being the only way in which the FACP hindered the evaluation process and failed to create a professional or at least neutral environment. He refers the Court particularly to the findings of the TATC at paragraphs 84 to 88 as well as 59 to 63, 68 and 69.

[41] There is little caselaw dealing with this reconsideration process from this Court. The decisions in *Sierra Fox* and *Bancarz* will be discussed later on. But what surprises me somewhat here is that this case was argued on the basis that the conclusion of the TATC that the PPC was not conducted in an objective and fair manner can justify in and of itself the issuance of a license to Mr. Turner for this type of aircraft as opposed to a decision by the Minister to declare the test null and void and of no effect or consequence on Mr. Turner's file (if any).[9] Usually, one does not obtain the right or status flowing from having successfully completed a process just because the process itself was flawed.[10]

[9] Whether it would be appropriate to simply declare a PPC null and void is a question better left for another day, after such issue has been thoroughly and more properly argued, including with respect to mootness. The Court also notes that subsection 7.2(1) of the *Act* should be reviewed as soon as possible given that the English or French versions appear to be in direct contradiction.

[10] Here, it appears that a PPC is valid for a maximum of 24 months. Also, actual practice of one piloting skills on a particular aircraft and/or re-training may be an issue.

[42] It is particularly difficult here to imagine how one can get a pilot license without clear evidence that one has passed his PPC and meets all the regulatory requirements for the issuance of such document.

[43] Thus, the Court reviewed very carefully the precedent cited in the TATC's decision. It appears that in *Hatfield* and *Grant*, the TATC's comments with respect to the quality of the test were not the main and certainly not the only reasons for sending the matters back for reconsideration. In *Hatfield*, the TATC member set aside the decision of the Minister not to renew Captain West and Captain Hatfield's licenses after clearly concluding[11] that when viewed in the context of the evidence and the discussion, two of the failures noted by the PPC examiner merited at worst a "SB" as opposed to a failure mark. And the pseudo error on the "hold procedure" should never have arisen as this exercise should not have taken place in the situation under review and at the very least it should have been repeated. I take all this to mean that in the circumstances of that case, the pilots should have been given a passing mark in light of their actual performances.

[44] In *Grant*, it is even clearer that the comments about the atmosphere during the test had little to do with the actual conclusion to quash the decision. At paragraph 64, the TATC says:

> "It is this member's finding, after reviewing the evidence presented before me, that I did not hear any contentious statements that were made, by either Captain Ludwig (instructor) or Inspector Matthews that could be construed as being confrontational in nature, prior to Captain Ludwig stopping or terminating the PPC. These comments were all made following the PPC termination; therefore, they could

[11] See paragraphs 213-223 of the decision.

> not have attributed to Captain Grant's level of apprehension that he may have been experiencing prior to as well as during the PPC itself."

[45] The Court understands from the above excerpt that the TATC feels compelled to denounce and bring to the attention of the Minister, all matters that may have an impact on the decision to issue, renew, suspend or cancel a license **as well as** any deviation from practices that are of interest to the Minister who may take whatever steps he thinks appropriate in such respect.

[46] That is the only way to explain, for example, comments about debriefing that would not be in accordance with the ACP Manual. At that stage, such matter can have no impact on the actual performance of an applicant and the assessment of his competency. But they could indicate that steps are to be taken to improve the manner in which the ACP Manual is applied by instructors. In the same manner, it may be important to signal SOPs that are deficient, even if this has nothing to do with the actual performance on the PPC. In fact here, Mr. Turner acknowledged that whatever discrepancies there were between Starlink SOPs (exhibit M-4) and the Quick Reference Handbook (exhibit M-6) used for the RTO examination, they had no impact on his performance (see question 1108 of the transcript). To ensure that there was no misunderstanding in that respect, the Court during the hearing asked Mr. Turner to reconfirm that such discrepancies (if any) could have had any impact. He acknowledged that they had not.

[47] All this to say that even though subsection 6.72(4) of the *Act* only deals with the reconsideration of the initial decision (not to issue license because of a failure of the PPC carried out

on June 5, 2006), there may be cases where the Minister may well take other steps to give effect to the TATC conclusions. There may also be cases where because the PPC was flawed, it is impossible even after considering the additional evidence adduced before the TATC to determine whether an applicant's technical performance was properly and sufficiently tested to conclude that he or she met the requirements for the issuance of a license.

[48] That said, how and on what basis was the reconsideration to be done? In *Sierra Fox*, Justice Luc Martineau, at paragraph 14, noted that the Minister has the legal obligation to take into account "all of the evidence, representations and findings of the reviewing proceedings [before the TATC] during which the plaintiff will have had a full opportunity to be heard and to present evidence".

[49] In *Bancarz*, Justice Michael Phelan made it very clear that the reconsideration is not simply a "rubberstamp" and blind adoption of the TATC's conclusions: "the TATC cannot speak for the Minister who has the ultimate authority in respect of the issuance of the type of licence at issue" (para. 31).

[50] The learned judge confirmed that the Minister's delegate may base his or her decision upon inquiry with other experts that do not have to come from outside the government. But he also said:

> [41] However, having adopted this procedure and to avoid the appearance of bias, the panel and the Minister must give credence

> and deference to the TATC's findings.[12] It is not sufficient for a review panel to merely disagree with the TATC's conclusions or the weight given to evidence by the TATC. To permit that type of conduct by such a panel would be to disregard the intent of Parliament in creating the TATC as an independent check on government decisions in the field of transportation licensing.
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> [footnote added]

[51] Finally, he noted, as Justice Martineau had done in *Sierra Fox*, that it is to be a reconsideration of "the matters upon which the Minister made the initial decision[13] and upon the evidence before and the conclusions reached by the TATC. It does not permit the Minister's officials to graze through the Applicant's history in an attempt to justify, *ex post facto*, the initial decision" (para. 42).

[52] In my view, there was no breach of procedural fairness here. Also, the Panel and the Minister did exactly what they had to do to determine whether Mr. Turner was entitled to obtain a passing mark on this PPC. They followed the same approach in respect of the two technical areas that were to be reassessed on the basis of additional evidence put forth before the TATC.

[53] It is evident that, with respect to the landing, they were satisfied that the execution and the manoeuvre chosen by Mr. Turner did not deserve a failing mark when one considered his

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[12] As mentioned, I believe that this can only apply to findings that are directly relevant to whether the applicant can be considered to have passed his PPC – the decision to be reconsidered.
[13] Here failure of items 18 and 7.

explanation as to why he did what he did. His misunderstanding as to what he was asked to do was not considered an error because of the communication problems identified by the TATC.

[54] Insofar as the "failed item 7" (the RTO) is concerned, they simply could not find that Mr. Turner had demonstrated that he knew his checklists and should have been given a passing mark. As mentioned, the Court was not asked to determine if the Minister should have declared the test or part thereof null and void or if he should have taken other measures vis-à-vis the FACP or Starlink.[14] It only has to determine whether or not the decision that Mr. Turner failed the test performed on June 5, 2006 contains a reviewable error and should be quashed.

[55] The Panel expressly refers to paragraphs 82 to 88 as well as the finding at paragraph 96 of the TATC's decision. It states:

> The ACP Manual states that rejected take-offs will be conducted in the simulator only. For PPCs conducted on board an aeroplane, the candidate will respond verbally on actions to be taken. The three witnesses confirmed that even after several tries, Mr. Turner did not change his response[15]. In this case, there was no communication issue other than Mr. Turner's stated attempt at second-guessing the ACP. Mr. Delbarre did as instructed in the ACP manual and assessed a mark of 1 for failing to carry out checks/procedures in accordance with the AFM and SOP manuals. The reasons provided by Mr. Turner do not in the Reconsideration Panel's opinion justify overturning the assigned mark of 1.
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> [Footnote added]

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[14] It is relevant to note that there is no evidence that the applicant asked for a re-test despite the fact that he was not satisfied with the Mr. Delbarre's assessment. Similarly, there is no evidence that he filed a complaint to the Transport Canada Regional Office responsible for Mr. Delbarre.

[15] Although the TATC, in its decision, focuses on the admitted error in respect of two inversed items (see para. 51), it does not discuss the evidence of Messrs. Duchesneau and Delbarre that he also made other errors including using wrong names for some switches. The evidence of Mr. Delbarre was based not only on his recollection but on notes taken during the test (see questions 150 to 155, 174, 194 and 377 for Mr. Duchesneau and questions 723 to 727 for Mr. Delbarre).

[56] At paragraph 96 of the decision, the TATC states that Mr. Turner did not have the opportunity to perform to the best of his ability and that this was confirmed more than once by the testimony of Mr. Duchesneau who states that he had pilot skills superior to those demonstrated on June 5, 2006. Such evidence may well be sufficient to assess whether the process used during the PPC allowed one to perform to the best of one's ability. However, it is difficult to imagine that it is a sufficient basis to establish that an applicant has demonstrated knowledge sufficient to pass the PPC. To say otherwise would mean that there is no real need for a PPC and that sponsorship from the training pilot should be sufficient. In any event, it is especially telling in this case to note that Mr. Duchesneau also testified that when asked by Starlink's Chief Pilot whether Mr. Turner was ready to fly solo with a co-pilot for the company, he answered no and indicated that Mr. Turner would need more time and maybe additional training.[16]

[57] The Court is satisfied having considered the evidentiary record and the conclusions of the TATC that the decision was one of the acceptable outcomes that could be reached on the basis of the facts and the law in this case (*Dunsmuir* at para. 47).

[58] Finally, even if the Court agrees with Mr. Turner that there was no evidence to support the comments quoted at paragraph 39, such finding does not justify quashing the decision. There is little doubt that this comment was purely speculative (as opposed to a reasonable inference). However, it is made to justify Mr. Delbarre's failure to use the headphones, a matter that is irrelevant (and was

[16] See questions 198 and 387 of the transcript.

acknowledged as such by the applicant) to the assessment in respect of Mr. Turner's performance on the RTO (see item 7 of the flight test report).

[59] In light of the foregoing, the application is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Johanne Gauthier"
Judge

ANNEX A

Aeronautics Act, R.S.C. 1985, c. A-2

Minister may refuse to issue or amend Canadian aviation document	Refus de délivrer ou de modifier un document d'aviation canadien
6.71 (1) The Minister may refuse to issue or amend a Canadian aviation document on the grounds that (a) the Applicant is incompetent; (b) the Applicant or any aircraft, aerodrome, airport or other facility in respect of which the application is made does not meet the qualifications or fulfil the conditions necessary for the issuance or amendment of the document; or (c) the Minister is of the opinion that the public interest and, in particular, the aviation record of the Applicant or of any principal of the Applicant, as defined in regulations made under paragraph (3)(a), warrant the refusal.	6.71 (1) Le ministre peut refuser de délivrer ou de modifier un document d'aviation canadien pour l'un des motifs suivants : a) le demandeur est inapte; b) le demandeur ou l'aéronef, l'aérodrome, l'aéroport ou autre installation que vise la demande ne répond pas aux conditions de délivrance ou de modification du document; c) le ministre estime que l'intérêt public, notamment en raison des antécédents aériens du demandeur ou de tel de ses dirigeants — au sens du règlement pris en vertu de l'alinéa (3) a) —, le requiert.
Notice (2) The Minister shall, by personal service or by registered or certified mail sent to their latest known address, notify the Applicant or the owner or operator of the aircraft,	Avis (2) Le ministre expédie alors à la dernière adresse connue du demandeur ou du propriétaire, de l'exploitant ou de l'utilisateur de l'aéronef, de l'aérodrome, de l'aéroport ou autre installation, par courrier recommandé ou certifié ou par signification à personne,

aerodrome, airport or other facility, as the case may be, of a decision made under subsection (1). The notice shall be in a form prescribed by regulation of the Governor in Council and, in addition to any other information that may be prescribed, shall indicate, as the case requires,
(a) the nature of the incompetence of the Applicant;
(b) the qualifications or conditions referred to in paragraph (1)(b) that are not met or fulfilled, as the case may be;
(c) the reasons for the Minister's opinion referred to in paragraph (1)(c); and
(d) except in the case of a document or class of documents prescribed under paragraph (3)(b), the address at which, and the date, being thirty days after the notice is served or sent, on or before which the Applicant, owner or operator may file a request for a review of the Minister's decision. […]

avis de sa décision, lequel est établi en la forme que le gouverneur en conseil peut fixer par règlement. Y sont notamment indiqués, selon le cas :
a) la nature de l'inaptitude;
b) les conditions visées à l'alinéa (1) b) auxquelles il n'est pas satisfait;
c) les motifs d'intérêt public sur lesquels le ministre fonde son refus;
d) sauf s'il s'agit d'un document ou d'une catégorie de documents visés par le règlement pris en vertu de l'alinéa (3)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. […]

Request for review

6.72 (1) Subject to any regulations made under paragraph 6.71(3)(b), an applicant, owner or operator who is served with or sent a notice under subsection

Requête en révision

6.72 (1) Sous réserve de tout règlement pris en vertu de l'alinéa 6.71(3) b), l'intéressé qui veut faire réviser la décision du ministre dépose une requête

6.71(2) and who wishes to have the Minister's decision reviewed shall, on or before the date specified in the notice or within any further time that the Tribunal on application may allow, file a written request for a review of the decision with the Tribunal at the address set out in the notice.

auprès du Tribunal à l'adresse indiquée dans l'avis au plus tard à la date limite qui y est spécifiée, ou dans le délai supérieur éventuellement accordé à sa demande par le Tribunal.

Time and place for review

Audience

(2) On receipt of a request filed under subsection (1), the Tribunal shall appoint a time and place for the review and shall notify the Minister and the person who filed the request of the time and place in writing.

(2) Le Tribunal, sur réception de la requête, fixe la date, l'heure et le lieu de l'audience et en avise par écrit le ministre et l'intéressé.

(3) The member of the Tribunal assigned to conduct the review shall provide the Minister and the person who filed the request with an opportunity consistent with procedural fairness and natural justice to present evidence and make representations.

(3) À l'audience, le conseiller commis à l'affaire accorde au ministre et à l'intéressé la possibilité de présenter leurs éléments de preuve et leurs observations, conformément aux principes de l'équité procédurale et de la justice naturelle.

(4) 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.

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

2001, c. 29, s. 34.

2001, ch. 29, art. 34

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-707-08
STYLE OF CAUSE:	LAWRENCE CLIFFORD TURNER v. MINISTER OF TRANSPORT (CANADA)
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	April 6, 2010
REASONS FOR JUDGMENT:	GAUTHIER J.
DATED:	June 7, 2010

APPEARANCES:

Mr. Lawrence Clifford Turner	FOR THE APPLICANT
Ms. Caroline Laverdière	FOR THE RESPONDENT

SOLICITORS OF RECORD:

None	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT