

CIVIL AVIATION TRIBUNAL

BETWEEN:

A.T.L. Air Tuteurs Ltée, Applicant

- and -

Minister of Transport, Respondent

LEGISLATION:

Aeronautics Act, R.S., c. 33 (1st Supp) s. 7.1 (1)(b)
Canadian Aviation Regulations, SOR/96-433, s. 507.02

Suspension, Certificate of Airworthiness, Bad Faith

Review Determination
Caroline Desbiens

Decision: June 25, 2001

TRANSLATION

I refer the matter back to the Minister for reconsideration and recommend that the Minister cancel the notice of suspension of the certificate of airworthiness issued in respect of aircraft C-GZKE should the examination of the matter reveal no further deficiencies or relevant considerations in respect of the aircraft in question warranting changing his decision from a simple letter of notification to the issuance of a notice of suspension of the certificate of airworthiness before expiry of the time limit for correction stated in letter of notification #24-0019.

A **review hearing** on the above matter was held July 6 and 7, 2000, in the building of the Federal Court of Canada in Montréal, Québec. The parties made their submissions in writing between July 27 and October 2, 2000.

BACKGROUND

The Applicant is the owner of twenty-two aircraft, nine (9) of which are the subject hereof. They are: six (6) Cessna 152 aircraft, one (1) a Piper 28-161 aircraft, and two (2) Grumman American

GA-7 Cougar aircraft. Each was the subject of a notice of suspension of its certificate of airworthiness following an impromptu audit by the Respondent at the Applicant's place of business between January 18 and February 2, 2000.

For the purposes of the hearing, and pursuant to an agreement between the parties, these nine cases (Q-2002-11 to Q-2010-11) were the subject of an enquiry and joint review hearing before this Tribunal.

The certificates of airworthiness of these aircraft were suspended pursuant to paragraph 7.1(1)(b) of the *Aeronautics Act*. Specifically, the notices of suspension state that pursuant to paragraph 7.1(1)(b) of the said Act, the Minister of Transport decided to suspend the certificate of airworthiness of each of the aircraft in question on the grounds that the aircraft did not comply with the conditions subject to which the documents were issued because each aircraft had been maintained in a manner that did not meet all standards of airworthiness.

THE EVIDENCE

With the exception of the Cessna 152 aircraft, registered under the Canadian call letters C-FFQO, all notices of suspension of the aircraft refer to form number 61-0008 issued by the Respondent, detailing all the noted deficiencies in contravention of the standards of airworthiness.

For six (6) of the nine (9) aircraft for which the notices of suspension were issued, the Respondent had first sent the Applicant letters of notification (24-0019) before issuing the notices of suspension.

Specifically, the notices of suspension and the letters of notification were issued to the Applicant on the following dates after a general audit of the Applicant's facilities and aircraft by Transport Canada inspectors, between January 18, 2000, and February 2, 2000:

- (a) Cessna 152 aircraft, registered under the call letters C-GLRX, CAT File No. Q-2002-11: letter of notification 24-0019 dated January 19, 2000 (14 deficiencies), and notice of suspension 26-0370 dated February 1, 2000 (14 deficiencies);
- (b) Grumman American GA-7 Cougar aircraft, registered under the call letters C-GXKP, CAT File No. Q-2008-11: letter of notification dated January 21, 2000 (4 deficiencies), and notice of suspension dated January 24, 2000 (79 deficiencies);
- (c) Piper 28-161 aircraft, C-GCTS, CAT File No. Q-2010-11: no letter of notification, and notice of suspension dated January 21, 2000 (44 deficiencies);
- (d) Grumman American GA-7 Cougar aircraft, C-GDBD, CAT File No. Q-2009-11: no letter of notification, and notice of suspension dated January 26, 2000 (71 deficiencies);

(e) Cessna 152 aircraft, C-FFQO, CAT File No. Q-2005-11: letter of notification dated January 27, 2000 (38 deficiencies), and notice of suspension dated February 2, 2000 (7 deficiencies);

(f) Cessna 152 aircraft, C-GBQK, CAT File No. Q-2004-11: two letters of notification dated January 31, 2000 totalling 20 deficiencies, and notice of suspension dated February 1, 2000 (20 deficiencies);

(g) Cessna 152 aircraft, C-GZKE, CAT File No. Q-2006-11: letter of notification dated January 31, 2000 (25 deficiencies), and notice of suspension dated February 1, 2000 (25 deficiencies);

(h) Cessna 152 aircraft, C-GPFX, CAT File No. Q-2007-11: letter of notification dated January 31, 2000 (3 deficiencies), and notice of suspension dated February 1, 2000, covering 24 deficiencies;

(i) Cessna 152 aircraft, C-GZKJ, CAT File No. Q-2003-11: no letter of notification, notice of suspension dated February 1, 2000 (25 deficiencies).

The reference to the dates appears on the second page of Exhibit M-1 entitled "Audit Finding" issued by Transport Canada. In six of the nine cases mentioned above, the letters of notification (form 24-0019) sent to the Applicant state that pursuant to subsection 8.7(1) of the *Aeronautics Act*, the aircraft described has been inspected and defects and deficiencies have been noted in the attached form bearing number 61-0008.

This letter of notification advises the Applicant to make the requested corrections as follows:

In accordance with Canadian Aviation Regulations, entries relating to these defects and deficiencies have to be made in the aircraft technical records and, where appropriate, corrective actions taken, before further flight of the aircraft. The pilot in command or the owner, or both could be made accountable for any contravention of these Regulations. Please confirm your compliance with these requirements by completing a declaration on the response letter attached to the notification letter 24-0019, and returning the completed statement (either the original or a facsimile thereof) to the Transport Canada office shown above, on or before [...].

You are reminded that all defects or deficiencies that affect the airworthiness of the aircraft must be corrected before further flight. Federal law prohibits the operation of an aircraft that is not in compliance with the conditions of its flight authority document.

If an acceptable response is not received by the response date indicated, the aircraft Flight Authority will be suspended pursuant to Section 7.1(1)(b) of the *Aeronautics Act*, on the ground that the aircraft has ceased to comply with the

conditions subject to which the flight authority was issued or the aircraft may be detained.

The six letters of notification pertaining to these cases generally give a period of thirty (30) days to carry out the necessary entries, corrections and maintenance listed in the attached form bearing number 61-0008 and entitled "Inspection Snag Sheet" and to send the response to the department confirming that the corrections have been made.

At the hearing, the Respondent filed in evidence an admission of facts as Exhibit M-1 duly signed by all parties.

It would be exhaustive to repeat each admission in detail. It is important to point out, however, that the Applicant has admitted, for each of the nine (9) aircraft involved, the content of all the Inspection Snag Sheets issued by Transport Canada (form 61-0008) for each aircraft, attached or referred to in the notices of suspension, as well as their date of issue. The Applicant has also admitted that the certificate of airworthiness of each of the aircraft in question was not valid at the time the Respondent issued the notice of suspension of the certificate of airworthiness.

It is also appropriate to point out the last paragraph of the Applicant's admission, which states:

It is understood by Transport Canada and myself that these admissions will in no way prejudice my right to provide a defense in these matters in accordance with procedural fairness and natural justice.

At the hearing, Mr. Norman White, chief engineer for the Applicant and its representative, indicated that this limitation clause had been stipulated to allow the Applicant to plead in defence the following two arguments, despite having admitted that the aircraft were not airworthy on the date their certificates were suspended:

(a) the Minister could not suspend the certificates of airworthiness when it had issued letters of notification and given the Applicant a period of thirty (30) days to correct the deficiencies. It would in fact be improper for Transport Canada to suspend the certificates of airworthiness of each of the aircraft before expiry of the period given for making the corrections;

(b) Transport Canada acted inconsistently since, in some cases, it cancelled the certificate of airworthiness of the aircraft while for other company aircraft of the same type, only a letter of notification was issued for the same deficiencies.

Despite these admissions, the parties nevertheless decided to proceed with file number Q-2004-11, in order to show the Tribunal the context in which the audit of the Applicant's facilities and aircraft was carried out. Specifically, Transport Canada wanted to show the seriousness of some of the deficiencies noted on the Cessna 152 aircraft C-GBQK, while the Applicant wanted to show that these deficiencies were only minor and that Transport Canada had acted arbitrarily in issuing a notice of suspension of the certificate of airworthiness when a letter of notification had previously been issued.

For the purposes hereof, I do not think it necessary to review in detail all the elements of evidence discussed in File No. Q-2004-11, and specifically, to elaborate on each of the 20 deficiencies noted in the inspection sheet for aircraft C-GBQK, because the Applicant has admitted, in Exhibit M-1 and in its testimony, all the deficiencies appearing in the five inspection sheets of Transport Canada for aircraft C-GBQK (with the exception of the airworthiness directives appearing on the first page, which according to the parties did not pertain to that aircraft). The Applicant also refused to admit the deficiency of having no tag showing the history of the engine compartment hoses ("Hose History Traces"). Except for these two deficiencies, however, the Applicant admitted all the others even though, in its opinion, many of them were minor and, in its view, their correction could be put off until the next aircraft inspection.

But no matter how serious each deficiency, they affected the airworthiness of the aircraft, as the Applicant admitted, although to varying degrees, and the Respondent had the authority to suspend the certificate of airworthiness.

This being said, it is appropriate to determine whether the Respondent acted fairly in suspending the certificate of airworthiness of aircraft C-GBQK.

In fact, in File No. Q-2004-11 involving aircraft C-GBQK, the Respondent issued two letters of notification comprising five inspection sheets (form 61-0008) listing the deficiencies to be corrected. These were actually the same deficiencies as those used to justify the suspension of the aircraft's certificate on February 1, 2000.

The letter of notification of January 31, 2000, for this aircraft C-GBQK (Exhibit M-2) gave the Applicant a period of approximately twenty-nine (29) days, that is, until February 29, 2000, to correct the deficiencies and make the necessary entries in the aircraft technical logs.

Despite the deadline stated in this letter of notification, two days after issuing this letter, the Respondent issued the notice of suspension of the aircraft's certificate of airworthiness February 1, 2000, without any new deficiencies being found or any refusal to make the said corrections. With this notice of suspension, the Respondent thus went back on its decision to allow the Applicant a period of thirty (30) days to make the corrections and return the response attached to the letter of notification 24-0019 to Transport Canada.

It should in fact be pointed out that according to the terms of the letter of notification, the Applicant need not have Transport Canada inspect the corrections and modifications to the aircraft, whereas according to the terms of a notice of suspension, Transport Canada must verify the corrections made to the aircraft before reinstating the certificate of airworthiness. The Applicant must also pay Transport Canada costs for reinstating its certificate of airworthiness, whereas Transport Canada charges no fee for acting on a letter of notification.

In short, the suspension of the certificate of airworthiness gives Transport Canada a right of control over the repair made by the company to which the certificate of airworthiness is issued.

At the hearing, the Respondent called Mr. Michel Lebrun, an inspector with Transport Canada, to attempt to explain why it was necessary to suspend the certificate of airworthiness of aircraft C-GBQK even though a letter of notification had been issued two days before.

Mr. Lebrun explained that twenty-two (22) of the Applicant's aircraft had been audited, and therefore inspected, by Transport Canada inspectors. In the course of the audit and inspections of the Applicant's aircraft, the inspectors gradually lost confidence in the way in which the Applicant maintained these aircraft. Specifically, Mr. Lebrun indicated that starting February 1, 2000, a general loss of confidence was felt by all the inspectors, hence the general decision to issue notices of suspension on February 1, 2000, despite the previous letters of notification for aircraft C-GLRX, C-GZKE, C-GBQK and C-GPFX. Mr. Lebrun indicated that after each workday while the Applicant was being audited, the inspectors got together to assess the situation, and as the audit progressed the inspectors became aware of carelessness in the maintenance of the aircraft.

Mr. Lebrun admitted that the decision to suspend the certificates of airworthiness on February 1, 2000, was a personal one based on the overall loss of confidence in the maintenance of the Applicant's aircraft, and not because additional deficiencies had been found on the Applicant's aircraft in respect of which letters of notification had already been issued.

In cross-examination, Mr. Lebrun even admitted that he would never have suspended the certificate of airworthiness of aircraft C-GBQK had the inspectors not found other deficiencies on other aircraft of the company. In short, it is owing to the loss of confidence in the company alone that the Respondent ultimately decided to suspend the certificates of airworthiness before expiry of the time periods for making the corrections as stated in the letters of notification.

It appears from the evidence that in addition to the four certificates of airworthiness suspended on February 1, 2000, two other certificates of airworthiness were suspended, even though letters of notification had previously been issued. They pertained to aircraft C-GXKP, for which a letter of notification was issued January 21, 2000, even though a notice of suspension had been issued January 24, 2000. The other aircraft was C-FFQO. Its certificate of airworthiness was suspended February 2, 2000, even though a letter of notification had been issued January 27, 2000.

As for the three other aircraft, bearing Canadian call letters C-GCTS, C-GDBD and C-GZKJ, it appears from the evidence that no letter of notification was sent to the Applicant and that Transport Canada inspectors immediately suspended the certificate of airworthiness of these aircraft on the following dates:

- C-GCTS: January 21, 2000
- C-GDBD: January 26, 2000
- C-GZKJ: February 1, 2000

At the hearing, a witness and inspector from Transport Canada, Mr. Bernard Laporte, indicated that these three aircraft had serious deficiencies such that immediate suspensions were given without a letter of notification being issued. Mr. Bernard Laporte, who was part of the audit team, also indicated that in his opinion, the Applicant's twenty-two (22) aircraft that were

inspected had enough deficiencies to warrant suspending all of the certificates of airworthiness. The only reason why Transport Canada issued just nine suspensions of the certificates of airworthiness was that the Respondent wanted to give the operator, A.T.L. Air Tuteurs Ltée, a chance and allow it to resume operations as soon as possible. In short, Mr. Laporte indicated that the inspectors who did the audit decided to suspend the certificates of airworthiness of only those aircraft having the most serious deficiencies.

As for the Applicant, in addition to the testimony of its representative and chief engineer, Mr. Norman White, it called only two witnesses, Mr. Ron Bissonnette and Mr. Bernard Laporte, Transport Canada inspectors.

Other than the fact that the Respondent had lost confidence in the Applicant's aircraft maintenance as of February 1, 2000, the witnesses Michel Lebrun, Ron Bissonnette and Bernard Laporte provided no explanation to justify the suspension of the certificate of airworthiness of aircraft C-GXKP on January 24, 2000, even though a letter of notification had been issued January 21, 2000. It appears, however, from the exhibits in CAT File No. Q-2008-11 and the second page of Exhibit M-1 entitled "Audit Finding" that the letter of notification pertaining to this aircraft C-GXKP dated January 21, 2000, covered only four deficiencies, whereas attached to the notice of suspension were 16 Inspection Snag Sheets, totalling 79 deficiencies. On reviewing the file, it therefore seems that the Respondent decided to suspend the certificate of airworthiness of this aircraft because further deficiencies, different from those accompanying the letter of notification, had been found during the inspection.

The same may be said of aircraft C-GPFX, CAT File No. Q-2007-11, since the letter of notification of January 31, 2000, covers four deficiencies, whereas the suspension of February 1, 2000, covers 25 deficiencies which are different from those accompanying the letter of notification.

In short, after documentary analysis of the nine files (CAT Files Nos. Q-2002-11 to Q-2010-11), we can group them into three categories:

The first category comprises three aircraft, namely, the Piper 28-161, C-GCTS, CAT File No. Q-2010-11, the Grumman American GA-7 Cougar, C-GDBD, CAT File No. Q-2009-11, and the Cessna 152, C-GZKJ, CAT File No. Q-2003-11, for which the Respondent directly issued a notice of suspension without previously issuing a letter of notification. The suspensions of the certificates of airworthiness of these aircraft were issued on January 21, 2000 (C-GCTS), January 26, 2000 (C-GDBD) and February 1, 2000 (C-GZKJ).

The second category comprises two aircraft, namely, the Grumman American GA-7 Cougar, C-GXKP, CAT File No. Q-2008-11 and the Cessna 152, C-GPFX, CAT File No. Q-2007-11, for which the Respondent issued letters of notification, with a snag sheet attached but for which a notice of suspension was issued before expiry of the time period stated in the letter of notification. The deficiencies listed in each notice of suspension did not appear in the letter of notification. In fact, the certificate of airworthiness of aircraft C-GXKP was suspended January 24, and covers 79 deficiencies on the aircraft, while the letter of notification is dated January 21, 2000, and covers only four deficiencies. As for the Cessna C-GPFX, its certificate of

airworthiness was suspended February 1, 2000, and covers 24 deficiencies, while the letter of notification is dated the previous day and covers four deficiencies.

Finally, the third category comprises four aircraft for which Transport Canada issued notices of suspension before the expiry of the time period provided in the letter of notification and for the same deficiencies as those listed in the prior letter of notification. The aircraft in question are:

- The Cessna A 152, C-GLRX, CAT File No. Q-2002-11, for which a notice of suspension was issued February 1, 2000;
- The Cessna 152, C-FFQO, CAT File No. Q-2005-11, for which a notice of suspension was issued February 2, 2000, and for which the notice of suspension covers only (7) deficiencies whereas the letter of notification covers 38;
- The Cessna 152 II, C-GZKE, CAT File No. Q-2006-11, for which the notice of suspension of certificate of airworthiness was issued February 1, 2000; and
- The Cessna 152, C-GBQK, CAT File No. Q-2004-11, whose deficiencies were the subject of the hearing in this case and for which a notice of suspension of certificate of airworthiness was issued February 1, 2000.

Finally, it should again be said that the Applicant, A.T.L. Air Tuteurs Ltée, admitted to the content of the snag sheets attached to all the letters of notification and the notices of suspension of all nine (9) aircraft, and has also admitted that the certificate of airworthiness of each of these aircraft was not valid at the time the notice of suspension was issued by the Respondent.

The dispute therefore comes down to the matters raised by the Applicant, A.T.L. Air Tuteurs Ltée.

ARGUMENTS OF THE APPLICANT

The Applicant contests the Respondent's right to suspend the certificates of airworthiness of the nine aircraft described above, not because the conditions subject to which the said certificates were issued were complied with at the time the suspensions were issued, but on the grounds that the Respondent improperly suspended, in an arbitrary and inconsistent manner, its certificates of airworthiness.

Specifically, the Applicant argues that the Respondent could not suspend the certificates of airworthiness of aircraft for which a letter of notification had previously been issued and under the terms of which it was granted a period of 30 days to make the corrections and notify Transport Canada of the said corrections. The Applicant submits that the Respondent, having decided not to suspend the certificates of airworthiness of the said aircraft by issuing letters of notification and grounding the aircraft, could not go back on its decision and suspend the certificates of airworthiness without further cause, and do so before expiry of the time period given the Applicant to correct the deficiencies. Thus, the Respondent acted improperly and arbitrarily since, at the time it decided to suspend the certificates of airworthiness, it had found no further deficiencies on these aircraft.

The Applicant argues that as a result of the improper notices of suspension, it had to pay the sum of \$410 per aircraft to reinstate its certificates of airworthiness, for a total cost of over \$3,700. The Applicant also argues that the corrections made to the aircraft deficiencies are subject to Transport Canada approval in the case of a suspension, which may result in further delays, whereas in the case of a letter of notification, Transport Canada has no right of control over how the corrections are made or the work is done, the company's maintenance engineer having the authority to certify the corrections made and return the aircraft to its airworthy condition.

The Applicant also argues that the Respondent's inspectors acted improperly and inconsistently in suspending the certificates of airworthiness of nine aircraft, but not the certificates of airworthiness of the company's thirteen other aircraft audited by Transport Canada. The Applicant in fact submits that other aircraft had the same deficiencies as those found on the aircraft for which the Respondent suspended the certificates of airworthiness. According to the Applicant, this would show that the Transport Canada inspectors acted arbitrarily and improperly.

In this regard, the Applicant refers the Tribunal to Exhibit D-7 concerning four other aircraft audited by Transport Canada, namely, aircraft GBLP, GPCV, GSKF and GSDD, without providing any explanation or expert evidence and without stating what deficiencies on these aircraft were similar to those on the other aircraft covered by the notices of suspension of certificate of airworthiness. Finally, the Applicant argues that the Transport Canada inspectors conducted the audit in a manner that was intimidating and with a threat of criminal action. No testimonial or documentary evidence of this was provided at the hearing.

The Applicant also asserts that had Transport Canada really found that the Applicant was operating its aircraft in a manner that was unsafe and endangered the safety of the public, it could have suspended the Applicant's operating certificate, which it did not do. In short, the failure to suspend the Applicant's operating certificate showed that the Transport Canada inspectors' loss of confidence in the Applicant as the reason for suspending certificates of airworthiness was merely a false pretext.

ARGUMENTS OF THE RESPONDENT

Mr. Umberto Tamborriello, the Respondent's case presenting officer, argues first that the Applicant admitted all the deficiencies pertaining to the nine aircraft and also that these aircraft were not airworthy in acknowledging that the certificates of airworthiness of the said aircraft were not valid at the time Transport Canada issued the notices of suspension.

The Respondent was therefore justified in suspending the certificates of airworthiness of these aircraft, however serious these deficiencies may have been.

The Respondent argues, specifically, that pursuant to paragraph 7.1(1)(b) of the *Aeronautics Act*, the Minister is justified in suspending a Canadian aviation document when the holder or the aircraft in respect of which the document was issued ceases to meet or comply with the conditions subject to which the document was issued. According to the Respondent, the

conditions subject to which the certificate of airworthiness was issued are set out in section 507.02 of the *Canadian Aviation Regulations* (CARs), which stipulates as follows:

507.02 Where an application for a flight authority is made pursuant to section 507.06, the Minister shall issue a certificate of airworthiness in respect of an aircraft

(a) for which an aircraft type design has been certified pursuant to Subpart 11 and the certification is not restricted or provisional;

(b) that conforms to its certified type design, and

(c) that is safe for flight.

Moreover, pursuant to section 507.11 of the CARs, the flight authority, in this case the certificate of airworthiness, remains in force indefinitely, provided the aircraft continues to meet the conditions subject to which the flight authority was issued.

In this case, the conditions subject to which the certificate of airworthiness of the aircraft was issued were not met, such that the certificates of airworthiness were no longer valid because the aircraft were not maintained according to the standards of airworthiness. The Respondent submits that in acknowledging that the certificates of airworthiness were no longer valid at the time Transport Canada issued the notices of suspension, the Applicant therefore admits that the nine aircraft were not maintained according to the standards of airworthiness. This admission means that the Respondent need not prove how each deficiency does not meet the standards of airworthiness. With regard to the Applicant's admissions, the Respondent refers the Tribunal specifically to Exhibit M-1 filed at the outset of the hearing.

In its written submissions, the Respondent argues, with regard to Cessna C-GBQK, that the testimony of Mr. Rosa and Mr. Lebrun showed that this aircraft had not only minor deficiencies, but also major deficiencies that affected its airworthiness, such that Transport Canada was all the more justified in suspending this aircraft's certificate of airworthiness. Specifically, these inspectors testified that thirteen of the twenty deficiencies listed on the inspection sheets for aircraft C-GBQK attached to the notice of suspension were major.

In countering the Applicant's arguments, the Respondent maintains that the Transport Canada audit team was justified in changing its decision to issue notices of suspension of certificates of airworthiness rather than just letters of notification, because as the audit of the aircraft progressed, the team observed a certain "carelessness" in the maintenance and servicing of the other aircraft as well as mediocre maintenance of the said aircraft. Transport Canada thus wanted to exert tighter control over the maintenance operations of the operators, in this case the Applicant, since the letters of notification did not permit the inspectors to verify the corrections made to the aircraft before reinstating the certificates of airworthiness.

The Respondent further argues that the inspectors acted within their discretionary powers delegated by the Minister to suspend the certificates of airworthiness. According to the

Respondent, the inspectors have a professional responsibility to ensure that the operators comply with the CARs to ensure aviation safety, and mediocre aircraft maintenance jeopardizes aviation safety. The inspectors were therefore justified in suspending the certificates of airworthiness.

As for the Applicant's arguments that the audit team used threats and intimidation, the Respondent maintains that no evidence of this was provided at the hearing.

Finally, the Respondent maintains that the Transport Canada inspectors did not need to suspend the Applicant's operating certificate in order to justify the suspension of the certificates of airworthiness. It is possible to suspend all certificates of airworthiness of the aircraft in the fleet and for suspension of the operating certificate to be unwarranted, since the operator can purchase or lease another airworthy aircraft and continue its operations. Transport Canada considers the suspension of an operating certificate to be an extreme measure taken by the Minister only when there is no other possible recourse for rectifying the situation to ensure aviation safety.

For all these reasons, the Respondent asks the Tribunal to confirm its decision to suspend the nine certificates of airworthiness of the aircraft in question pursuant to subsection 7.1(8) of the *Aeronautics Act*.

ANALYSIS AND CONCLUSIONS

Pursuant to paragraph 7.1(1)(b) of the *Aeronautics Act*, the Minister has the authority to suspend a Canadian aviation document, in this case the certificate of airworthiness, when the holder or the aircraft in respect of which the document was issued ceases to meet or comply with the conditions subject to which the document was issued.

In the context of a suspension of a certificate of airworthiness, the Minister is responsible for establishing the grounds for the suspension on the balance of probabilities.

The powers of the member are more fully set out in subsection 7.1(8), which provides as follows:

(8) 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 conducting the review may determine the matter by confirming the suspension, cancellation or refusal to renew or by referring the matter back to the Minister for reconsideration.

In the present case, it is my opinion that the Respondent has shown on the balance of probabilities that the certificates of airworthiness of the aircraft in question no longer met their conditions for issuance because the Applicant has admitted all the deficiencies pertaining to the aircraft in question and the certificates of airworthiness were not valid at the time the Respondent issued the notices of suspension. In doing so, the Applicant has therefore admitted that the aircraft were not maintained according to the standards of airworthiness, making it unnecessary and exhaustive to go back over each of the deficiencies noted for each aircraft.

Moreover, contrary to the Applicant's argument, and after examining Exhibits D-7, it appears that the deficiencies noted for other of the Applicant's aircraft whose certificates of airworthiness were not suspended, are not all the same as those noted for the aircraft in question. Other than the filing of the sheets in D-7, no evidence or expert report has been presented to the Tribunal to allow it to determine whether the same parts and same deficiencies were involved. Given the lack of evidence in this regard, I cannot concur with the Applicant's argument that the Respondent acted inconsistently and improperly in suspending the certificates of airworthiness of the aircraft in question without cause because the other aircraft for which only letters of notification were issued had the same deficiencies.

In view of these admissions, and given the absence of evidence by the Applicant that the Transport Canada inspectors uttered threats and used intimidation, and also given the absence of evidence that the aircraft to which the notices of suspension pertain had the same deficiencies as the other aircraft in the fleet for which no notices of suspension were issued, I find that Transport Canada was justified in suspending the certificates of airworthiness of the following aircraft, for which no letter of notification was issued:

- Cessna 152 aircraft, registered under Canadian call letters C-GZKJ, CAT File No. Q-2003-11;
- Grumman American GA-7 Cougar aircraft, registered under Canadian call letters C-GDBD, CAT File No. Q-2009-11; and
- Piper 28-161 aircraft, registered under Canadian call letters C-GCTS, CAT File No. Q-2010-11.

The Respondent also showed, through Mr. Lebrun's testimony, that these three aircraft had major deficiencies warranting suspension of the certificates of airworthiness, and the Applicant has offered no evidence to counter this testimony, being content merely to submit that other aircraft in the operator's fleet for which no suspension was issued had the same deficiencies. In the absence of evidence to this effect, I therefore find that Transport Canada was justified in suspending the certificates of airworthiness of these aircraft and that it did not act arbitrarily in doing so.

It also cannot be inferred from the fact that the Applicant's operating certificate was not suspended, that the deficiencies found on the aircraft in question were a false pretext and that the Respondent therefore acted arbitrarily.

I come to the same conclusion with regard to the second category of aircraft discussed earlier, namely, the two aircraft C-GXKP (CAT File No. Q-2008-11) and C-GPFX (CAT File No. Q-2007-11), since even if a letter of notification was issued to the Applicant to correct the deficiencies on these aircraft, further deficiencies found on these two aircraft warranted the Respondent's suspension of their certificates of airworthiness. In fact, the deficiencies listed in the letters of notification for these two aircraft were fewer in number and different from the listed deficiencies attached to the notices of suspension, and the Applicant admitted these deficiencies in Exhibit M-1. The Applicant also admitted that the certificates of airworthiness of both these aircraft were not valid at the time the Minister issued the notices of suspension.

The Applicant's argument that the Respondent was not justified in suspending the certificates of airworthiness of these two aircraft on the ground that a letter of notification had been issued and the 30-day period had not yet expired, is therefore dismissed since the Respondent suspended the certificates of airworthiness for deficiencies other than those mentioned in the letters of notification. New elements therefore enabled the Respondent to suspend the certificates of airworthiness, and in the absence of evidence of abuse, malice or intimidation, I cannot conclude that the certificates of airworthiness of these aircraft were suspended arbitrarily or improperly.

Finally, the third category of aircraft previously discussed deserves special attention, since the Respondent suspended their certificates of airworthiness because of the same deficiencies as those noted in the letters of notification, and before expiry of the 30-day period provided in the letters of notification. The aircraft in question are:

- Cessna 152 registered under Canadian call letters C-GLRX, CAT File No. Q-2002-11;
- Cessna 152 registered under Canadian call letters C-GBQK, CAT File No. Q-2004-11;
- Cessna 152 registered under Canadian call letters C-FFQO, CAT File No. Q-2005-11; and
- Cessna 152 registered under Canadian call letters C-GZKE, CAT File No. Q-2006-11.

For Cessna FFQO, at the time of the suspension there were even thirty-one (31) fewer deficiencies than at the time of the letter of notification.

For these four aircraft, the matter in dispute is therefore whether Transport Canada was justified in suspending their certificates of airworthiness before expiry of the time period granted the Applicant to correct the same deficiencies as those covered by the notice of suspension. In short, did the Respondent act arbitrarily or improperly in changing its initial decision to issue only a letter of notification and issuing a notice of suspension in these four cases, when no new element or new deficiency had been found on these aircraft?

Pursuant to paragraph 7.1(1)(b) of the *Aeronautics Act*, the Minister has the authority to suspend a certificate of airworthiness when the aircraft to which the document pertains no longer meets or complies with the conditions subject to which the document was issued. In the present case, owing to the Applicant's admission, it appears that the four certificates of airworthiness for these aircraft no longer met their conditions of issuance, such that the Minister had the authority to suspend them.

The Minister's authority must, however, be exercised reasonably and in good faith. In fact, before making a decision that affects rights, the Minister must ensure that he not only is competent to act, but he must also comply with the formalities prescribed by law, particularly those imposed by the duty to act fairly. Specifically, the Minister does not act fairly if he does not base his decision on relevant reasons, if he acts for improper ends or contrary to the spirit of the law, if he has acted without any cause warranting his action or in bad faith, in a discriminatory manner or in an unreasonable or ludicrous manner. These principles have been recognized many times by the jurisprudence applicable to control of discretionary power.^[1] According to Professor Garant, to fail in the duty to act fairly may show bad faith.^[2] "Where the

public authority has been incorrect or "unfair" in the procedure leading to its decision, jurisprudence tends to regard this as bad faith" [translation].

In his work on administrative law, Professor Garant points out, moreover, that the Québec courts tend to infer bad faith when there is a grave injustice, regardless of the actual intent to commit an abuse of authority^[3]:

[Translation]

There is, moreover, a fairly broad trend in jurisprudence to infer bad faith from the gravity of an injustice committed. One finds in numerous decisions the expression 'grave injustice' equivalent to 'bad faith.' This means that the injustice is such that a decision made in bad faith has appreciably the same effect. Ultimately, it could be said that a presumption of bad faith ensues from the gravity of the injustice.

[...]

The courts therefore go so far as to assess the extent of the gravity of the injustice suffered in order to consider whether it is sufficiently grave that bad faith can be inferred from it.

A number of authors also note the tendency of the courts to qualify as bad faith the abuse of authority committed through manifest negligence, without intentional illegality being established.^[4]

In a number of decisions, it has been ruled that an administrative authority that bases a decision on a ground unrelated to the matter is not exercising discretionary power judiciously.^[5]

Professor Garant points out, moreover, that it will happen that the Court examines the reasons cited by the Administration to verify whether they normally warrant the act criticized. If they are not relevant and if the Administration apparently has no other reason for taking such action, the Tribunal will overturn the act complained of.^[6]

In the context of a judicial review remedy, the courts may therefore rule invalid an administrative act tainted with bad faith, and this bad faith is presumed when the administrative officer renders a decision on the basis of irrelevant considerations.

The case under review does not involve a judicial review remedy and the Civil Aviation Tribunal does not expressly have the authority, pursuant to subsection 7.1(8) of the *Aeronautics Act*, to cancel the notices of suspension of certificates of airworthiness issued by the Respondent even were it to find that the Minister did not act fairly in exercising its authority of suspension pursuant to section 7.1. Moreover, the Applicant has not expressly raised the matter of the cancellation of the notices of suspension in this case, so I cannot address this issue in the context of this proceeding. Be that as it may, I do believe that the Minister's failure to act fairly in exercising its authority to suspend certificates of airworthiness pursuant to section 7.1 may constitute a ground for the Tribunal referring the cases back to the Minister for reconsideration.

In the present case, the notices of suspension pertaining to these four aircraft imposed one or two days after the notification, cover exactly the same deficiencies as those mentioned in the letter of notification. The evidence has shown that the only reason why the Respondent decided on February 1 and 2, 2000, to suspend the certificates of airworthiness of the four aircraft was that the officers of the audit team had lost confidence in the Applicant's maintenance organization. In short, the only reason the Respondent went back on its decision is limited to the fact that the officers noted a significant number of deficiencies in aircraft maintenance as the inspection progressed, but there were no further deficiencies on these four aircraft. This reason is not pertinent or relevant to each of the aircraft for which the certificate of airworthiness was suspended, but rather is related to the Applicant's operation. Nor has any evidence been offered in respect of these four (4) aircraft to show that the Applicant refused to correct the deficiencies mentioned in the letters of notification or that it refused to address them or was nonchalant about them. On the contrary, for aircraft FFQO, the evidence shows that the Applicant had undertaken the repairs, since thirty-one (31) deficiencies disappeared in six days.

It is my opinion, therefore, that the Transport Canada inspectors did not act fairly and did act arbitrarily when they decided to suspend the certificates of airworthiness of the four aircraft described above, even though the period of thirty (30) days granted to correct the deficiencies had not expired and no reason pertaining specifically to each aircraft in question warranted this decision.

In short, the decision to suspend the certificates of airworthiness of these four aircraft was not based on considerations relevant to these aircraft, but rather on an overall impression of loss of confidence in the Applicant's organization. In the absence of evidence on the part of Transport Canada of additional deficiencies pertaining to these aircraft or of considerations relevant to these aircraft, such as a refusal to correct the deficiencies, the Tribunal must conclude that the decision is arbitrary, leading to the presumption of bad faith.

Consequently, I refer the matter of files Q-2002-11, Q-2005-11, Q-2004-11 and Q-2006-11 back to the Minister for reconsideration and recommend that the Minister cancel the notices of suspension issued in these cases should the files reveal no new element pertaining to the letters of notification or no consideration relevant to each of the aircraft in question to justify the arbitrary change of decision from a simple letter of notification to a notice of suspension before expiry of the time period.

Caroline Desbiens
Member
Civil Aviation Tribunal

^[1] Patrice Garant, *Précis de droit des administrations publiques*, les Éditions Yvon Blais Inc., 3^e édition, pp. 257 et seq.; *Développements récents en droit administratif et constitutionnel*, Service de l'information permanente, Barreau du Québec, (1999) les Éditions Yvon Blais Inc., "La mauvaise foi et la responsabilité de l'État", M^e Pierre Giroux and M^e Stéphane Rochette, pp. 117

et seq.; Patrice Garant, *Droit administratif*, 4^e édition, vol. 2 "Le Contentieux," les Éditions Yvon Blais Inc., pp. 397 *et seq.*

^[2] P. Garant, *Droit administratif*, 4^e édition, Cowansville, Éditions Yvon Blais Inc., (1996) p. 410.

^[3] *Idem*, p. 413, 414 and 415.

^[4] In this regard, see *Développements récents en droit administratif et constitutionnel*, "La mauvaise foi est la responsabilité de l'État" M^e Pierre Giroux and M^e Stéphane Rochette, les Éditions Yvon Blais Inc., (1999) pp. 130 to 133.

^[5] *Ron Carelli v. Duplessis*, (1959) S.C.R. 121.

^[6] P. Garant, *Droit administratif*, 4^e édition, page 421.