



## **TRANSPORTATION APPEAL TRIBUNAL OF CANADA**

**Citation:** *Exploits Valley Air Services Ltd. v. Canada (Minister of Transport)*, 2020 TATCE 4 (Appeal)

**TATC File No.:** Q-4342-41

**Sector:** Aviation

### **BETWEEN:**

**Exploits Valley Air Services Ltd.**, Appellant

- and -

**Canada (Minister of Transport)**, Respondent

**Heard in:** Toronto, Ontario, on July 9, 2019

**Before:** Andrew Wilson, Member (chairing)

James E. MacDonald, Member

Teryl Robbins, Member

**Rendered:** February 20, 2020

### **APPEAL DECISION AND REASONS**

**Held:** The appeal is allowed. The monetary penalty in the amount of \$5,000 is cancelled.

## **I. BACKGROUND**

### **A. Facts of the Case**

[1] This is an appeal of a review determination rendered on August 17, 2018. The review hearing took place on February 27, 2018 in Montreal and was continued on March 6, 2018 in Toronto. The appellant filed a request for appeal on September 11, 2018.

[2] The review determination dealt with two violations: one under paragraph 605.03(1)(a) of the *Canadian Aviation Regulations (CARs)* and one under subsection 706.08(1) of the *CARs*. The review member upheld the violation under paragraph 605.03(1)(a) and this determination is the basis for the appeal.

[3] The grounds for appeal are stated as:

- a) The Tribunal member erred when he found a contravention of section 605.03(1)(a) of the Canadian Aviation Regulations;
- b) The Tribunal member erred when he relied upon opinion evidence of a witness who was not qualified as an expert and not qualified to give opinion evidence on metal fatigue and failure;
- c) The Tribunal member erred in denying procedural fairness to the Applicant by permitting a witness to give opinion evidence, when the Applicant had no notice that the Respondent would be calling an expert to give opinion evidence or the substance of that evidence;
- d) The Tribunal member erred in interpreting section 605.03(1)(a) of the Canadian Aviation Regulations concerning the validity of a Certificate of Airworthiness;
- e) The Tribunal member erred in concluding that a minor defect in a secondary structural component rendered a Certificate of Airworthiness invalid; and
- f) The Tribunal member erred in failing to find the Applicant exercised all due diligence.

[4] For the reasons stated below, we allow the appeal based on ground (a). We therefore consider it unnecessary to rule on the remaining grounds.

[5] The facts of this case are not controversial. Rather, this appeal turns on whether the applicable regulations were properly interpreted and applied.

[6] The facts can be briefly stated, and are well summarized in the review determination:

[11] The Tribunal learned that during a routine ramp inspection on aircraft C-GLHO in Sept-Îles, Quebec, TC [Transport Canada] Inspector Constant Rosa observed damage and defects to the aircraft's right-hand landing gear door. Inspector Rosa produced a detection notice (Exhibit M-1) and reported his finding to TC Regional Inspector Patrice Boudreau, who was responsible for EVAS [Exploits Valley Air Services]. As TC inspectors are directed not to interfere or delay flights, Inspector Rosa carried out his ramp inspection in the same amount of time as an EVAS pilot would have needed for a pre-flight inspection and was able to detect the damage and defects on the aircraft landing gear door.

[7] The TC inspector issued a Letter of Notification to the appellant on July 11, 2016, describing the damage that he had discovered. The appellant immediately consulted an independent "DAR", a Mr. Clark, to inspect the damage. Although the witness for Transport Canada was not certain about the proper decoding of the acronym "DAR" (he suggested that it means "Designated Airworthiness Representative", whereas our understanding is that it means

“Design Approval Representative”), nothing turns on this. Both parties agree that a DAR is a representative and delegate of the Minister of Transport (Minister), and exercises his or her delegated authority on behalf of the Minister by issuing an “Engineering Authorization” (EA).

[8] After conducting his inspection, Mr. Clark issued an EA entitled “ALLOWANCE FOR CONTINUED OPERATION WITH MINOR DAMAGE ON RH NACELLE”. It categorizes the damage as MINOR, with reference to CAR 571. The EA further states:

This Engineering Authorization (EA) provides acceptance of continued service with a crack in the RH inboard gear door hinge as well as a popped rivet head and 2 missing screws in the aft nacelle.

The minor defects, as shown on sheet 2 and 3, may be left as is for 25 flight hours maximum before permanent repair is carried out in accordance with the B1900 SRM (or other approved instructions).

[9] The aircraft was repaired prior to reaching the permitted 25 additional flight hours.

[10] In the Notice of Assessment of Monetary Penalty dated June 27, 2017, the Minister specified that:

1. On July 11th 2016, or thereabouts, Exploits Valley Air Services Inc. operated aircraft C-GLHO, a Beechcraft B1900D, in flight between Wabush (CYWK) and Sept-Îles (CZV) when a flight authority was not in effect in respect of the aircraft; more specifically the aircraft was operated while its R/H gear inboard door hinge was cracked and nearby fasteners were missing, thereby contravening paragraph 605.03 (1) a) of the *Canadian aviation regulations* (CARs).

[11] Subsection 605.03(1) of the *CARs* provides:

Flight Authority

**605.03 (1)** No person shall operate an aircraft in flight unless

(a) a flight authority is in effect in respect of the aircraft;

(b) the aircraft is operated in accordance with the conditions set out in the flight authority;  
and

(c) subject to subsections (2) and (3), the flight authority is carried on board the aircraft.

[12] What is meant by a “flight authority” being “in effect” will be explored at length below. For present purposes it suffices to say that the aircraft must be “airworthy”. Under the *CARs*, there is a two-part test for airworthiness:

**101.01 (1)** In these Regulations:

*airworthy*, in respect of an aeronautical product, means in a fit and safe state for flight and in conformity with its type design;

[13] To the Minister’s credit, at the appeal hearing, counsel explicitly stated that it was not taking, and had never taken, the position that the aircraft was unsafe for flight, but only that it did not conform to its type certificate. A review of the transcript shows this to be correct. Indeed it would have been difficult, and perhaps also unfair, for the Minister to argue that the aircraft had been unsafe for flight in the face of the facts that (i) the TC inspector who observed the problem declined to ground the aircraft under the authority of *Aeronautics Act* (Act) paragraph 8.7(1)(d), and (ii) the Minister’s own delegated representative (the DAR) contemporaneously examined the aircraft and authorized it for continued flight.

[14] The review determination makes a conclusory finding that the flight authority is invalid due to the detected damage and defects, but does not explain this finding in light of the applicable regulatory definitions and requirements:

[23] The Tribunal learned that the damage and defects detected and reported by Inspector Rosa had rendered the aircraft's flight authority invalid and the aircraft no longer met the conditions for airworthiness. The condition and characteristics of the cracked hinge and smoking rivets indicated that the damage and defects were not recent occurrences, which led to the conclusion that the aircraft had carried out previous flights without a valid flight authority.

[...]

[25] ... Mr. Burroughs testified that the damage and defects rendered the aircraft's flight authority invalid and exhibited characteristics of having been present for quite some time. The Tribunal therefore concluded that, on a balance of probabilities, the aircraft's flight authority was invalid prior to the flight from Wabush to Sept-Îles, thereby contravening paragraph 605.03(1)(a) of the CARs.

## **B. The Certification Process**

[15] In order to resolve this question, it is helpful to set out in some detail the scheme of the CARs as it concerns aircraft certification and continuous airworthiness.

### **(1) Overview**

[16] The aircraft certification scheme of the CARs is long and detailed. Essentially, preliminary design documents are submitted in accordance with CARs section 521.28. After a period of review, testing and revision, a final "type design" is developed so as to meet the certification basis established by the Minister under CARs section 521.30. If at the end of the day the Minister is satisfied that the type design meets the certification basis, a type certificate will then be issued. Thereafter, in order to be flown, each individual aircraft of that type requires a flight authority, the most common of which is a Certificate of Airworthiness.

### **(2) Type Design**

[17] Although the process of development and approval of a "type design" requires the submission of a considerable amount of documentation, such as flight and structural test results, aircraft operating manuals, maintenance manuals and parts catalogues, only a portion of that documentation actually comprises the "type design". The actual elements of the "type design" are set out in the CARs as follows:

**101.01 (1)** In these Regulations:

*type design* means

- (a) the drawings and specifications, and a listing of those drawings and specifications that are necessary to define the design features of an aeronautical product in compliance with the standards applicable to the aeronautical product,
- (b) the information on dimensions, materials and manufacturing processes that is necessary to define the structural strength of an aeronautical product,
- (c) the approved sections of the aircraft flight manual, where required by the applicable standards of airworthiness,

- (d) the airworthiness limitations section of the instructions for continued airworthiness specified in the applicable chapters of the *Airworthiness Manual*; and
- (e) any other data necessary to allow, by comparison, the determination of the airworthiness and, where applicable, the environmental characteristics of later aeronautical products of the same type or model;

[18] The first notable feature of this definition is that it starts with “type design means”. This language denotes that the list that follows is exhaustive.

[19] A second notable feature of this definition is that, by paragraph (d), the only portion of the aircraft instructions for continuing airworthiness (generally, the aircraft maintenance manual and related documents) that is part of the “type design” is the “limitations section”. It follows that the remainder of the maintenance manual is not part of the type design. It is common knowledge that the “limitations section” of a maintenance manual contains a list of overhaul and life limits for various components, stated in terms of cycles, flight hours, calendar time etc. We need not rely on this common knowledge to make our decision, however, we clarify this point since the Minister did not argue that any such limitation had been exceeded, and did not enter the “limitations section” into evidence.

[20] We therefore note that when the Minister’s witness testified that the maintenance manual and the illustrated parts catalogue are part of the type design, he was incorrect as a matter of law. Rather, in accordance with the *CARs* definition, only the limitations section of the maintenance manual is part of the type design, and parts catalogues are not part of the type design.

[21] This does not in any way diminish the importance of these or any other approved maintenance documents. To be clear, strict adherence to maintenance manuals, and indeed all other maintenance requirements, is vitally important for airworthiness. However, as a matter of **legal categorization**, it is important in this case to note that the definition of “airworthiness” contains two logically separate elements. Since maintenance manuals (other than the “limitations section”) and other similar documents are pointedly excluded from the definition of “type design”, it legally and logically follows that they do not pertain to “conformity with the type design”, but pertain instead to the second requirement for airworthiness, that is, maintaining the aircraft in “a fit and safe state for flight”.

[22] Relating this back to the definition of “airworthiness”, clearly wear, damage or other unserviceability could render the aircraft not airworthy under the rubric of “fit and safe state for flight”. So too could a failure to follow a maintenance manual or any other requirement mandated by the Minister. However, it is far from clear that any such issue also inevitably engages a question of conformity with the type design.

### (3) *Type Certificate*

[23] Based on a satisfactory “type design”, the Minister may issue a “type certificate”, which is also a defined term under the *CARs*:

**101.01 (1)** In these Regulations,

*type certificate* means

(a) a document, including a type approval issued before October 10, 1996 under section 214 of the *Air Regulations*, issued by the Minister to certify that the type design of an aircraft, aircraft engine or propeller identified in the document meets the applicable standards for that aeronautical product recorded in the type certificate data sheets, or

[...]

[24] By subsection 521.31(1), the “applicable standards” referred to in this definition are found in the applicable chapter of the *Airworthiness Manual*, a TC document of general application to the certification process.

[25] This definition also makes reference to the “type certificate data sheets” (TCDS) for the type. A TCDS commonly sets out the conditions and limitations under which the type certificate was issued. Typically, a TCDS sets out such things as general operating limitations, basic weights and dimensions, engine model numbers, and time and cycle limitations on various aircraft components. However in this case, the TCDS for the Beech 1900 aircraft was not entered into evidence by either party, so we have no idea what it actually contains and decline to speculate.

#### **(4) *Certificate of Airworthiness***

[26] Lastly, in order to fly in Canada, any particular aircraft requires its own “flight authority”. The pertinent portion of *CARs* subsection 605.03(1) is reproduced below:

**605.03 (1)** No person shall operate an aircraft in flight unless

(a) a flight authority is in effect in respect of the aircraft;

[27] The flight authority that is relevant to this matter is the Certificate of Airworthiness (C of A). The terms of issue of a C of A are set out in section 507.02:

##### **Certificate of Airworthiness**

**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 by the Minister and the certification is not in respect of a restricted category aircraft;

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

(c) that is safe for flight.

#### **(5) *Duration of the Certificate of Airworthiness***

[28] Section 507.02 relates to the initial issue of a C of A. The duration of the C of A is addressed in section 507.11:

##### **Duration of a Flight Authority**

**507.11** Unless surrendered, suspended or cancelled, a flight authority issued pursuant to this Subpart remains in force during the period or for the number of flights specified in it or, where no limit is specified, indefinitely, if the aircraft continues to meet the conditions subject to which the flight authority was issued.

[29] The parties agree that the “conditions” referred to in section 507.11 are those set out in section 507.02. Therefore, reading sections 507.02 and 507.11 together, the C of A will remain in force so long as:

- a. an aircraft type design has been certified by the Minister and the certification is not in respect of a restricted category aircraft;
- b. the aircraft conforms to its certified type design; and
- c. the aircraft is in a fit and safe state for flight.

[30] We accept the parties’ submissions in this regard. It is also worth observing that this reading of the sections aligns perfectly with the *CARs* definition of “airworthiness” quoted above. Unsurprisingly, a C of A remains in force so long as the aircraft continues to be “airworthy”, as defined.

## II. ANALYSIS

### A. Issue

[31] It is uncontested that a valid type certificate has been issued for the Beech 1900 aircraft type on the basis of its type design, and that it is not in the restricted category. Therefore, the parties agree that paragraph 507.02(a) is satisfied in this case.

[32] Counsel for the Minister made it very clear, both on review and at the appeal hearing, that **the Minister does not contest that at the time it was “ramped” in Sept-Îles, the aircraft was safe for flight**. Therefore, it follows that paragraph 507.02(c) is also satisfied.

[33] Consequently, the **only** question in this matter is whether paragraph 507.02(b) has been met. In other words, did the aircraft “conform to its type design”?

#### (1) *Review Determination*

[34] As mentioned, although the factual matrix is amply set out, the review determination does not grapple with the question of whether the aircraft did or did not conform to its type design, or the underlying legal question of the proper interpretation of the phrase “in conformity with its type design”.

[35] Rather, we are simply told that “Mr. Burroughs testified that the damage and defects rendered the aircraft’s flight authority invalid”.

[36] Obviously, a fact witness is not qualified to opine on a question of law. And even if Mr. Burroughs had been qualified as a legal expert, his opinion testimony on the ultimate legal question would still require the member to conduct his own analysis and make his own determination on the issue. Here, however, the review determination provides no explanation as to why the witness’ merely conclusory legal interpretation has been accepted.

**(2) *Standard of Review***

[37] Both parties on appeal agreed that the question of the proper construction of the CARs as to the meaning of “conforms with the aircraft type design” is a question of law, and that the appropriate standard of review is correctness. We agree.

[38] We find that the facts alleged cannot, as a matter of law, amount to a non-conformity with the aircraft type design.

[39] We also find, as will be explained below, that the Minister proffered no evidence whatsoever as to the specifics of the B1900 type design. Without any relevant elements of the type design in evidence, it is not possible to conclude that the aircraft in question did not conform to its type design. We find that the Minister has failed to provide sufficient – indeed, any – evidence to meet its burden of proof on an essential element of the charge. With respect, it follows that the determination was unreasonable and cannot stand on any standard of review.

[40] For both of these reasons, this panel is entitled by subsection 8.1(1) of the *Act* to substitute its own decision for the determination appealed against, and will do so.

**(3) *Conformity with Type Design***

[41] It was agreed by both parties that an aircraft may present with any number of defects, many of which may not be specifically addressed in the “instructions for continuing maintenance”, in this case the Beech 1900 Maintenance Manual. It is not controversial that where such instructions are provided, an appropriately qualified aircraft maintenance engineer (AME) may perform those instructions and issue a maintenance release, which will then satisfy both the conformity and safety requirements for airworthiness. The disagreement between the parties is with regard to defects such as in the present case, for which no specific standards or instructions are published.

[42] In the Minister’s view, in the absence of any specific approved maintenance instructions, all in-service defects must be viewed solely through the lens of conformity with the type design. It would follow from this view that, even where the aircraft with such a defect (as here) is in a fit and safe state for flight, the aircraft nonetheless would not conform with its type design, and its flight authority would therefore be invalid.

[43] At the review hearing, the Minister recited the defined elements of a “type design”, but on its face this definition does not offer any support for the liberal interpretation advanced by the Minister. The Minister did not provide a single relevant document listed in the definition. Instead of evidence, the Minister offered the following argument: an aircraft design would not depict broken parts; a prototype used for type certification would not have broken parts; therefore, only an aircraft without broken parts conforms to its type design.

[44] The Minister went on to state that when any degradation of the aircraft from the originally-certified condition is not specifically permitted in the approved instructions for continuing airworthiness, or by some other form of authorization from the Minister, then the aircraft does not conform to its type design and is therefore not airworthy, regardless of whether it is safe to fly or not.



[45] The Minister further stated that no AME could determine whether or not an aircraft in such condition was airworthy, since only a Transport Canada official had the authority to determine whether the aircraft conforms to the original type design, or to approve the repairs required to achieve conformity.

[46] The Minister also argued that a DAR is not entitled to approve any non-conformity with the original type design. In evidence, a DAR was compared to an industry consultant. With respect, this flies in the face of the admission by the Minister's witness that a DAR is a delegate of the Minister and issues approvals (in the form of an EA) on the Minister's behalf.

[47] For its part, the appellant argued that the Minister had applied a far too strict interpretation of the *CARs*, that not every deviation from the standard of perfection amounted to non-conformity with the type design, and that the crack in question did not amount to a non-conformity. Therefore, the appellant contends that there was no basis in law or in fact for the charge to stand.

#### **(4) Statutory Interpretation**

[48] We are required in this case to interpret the meaning of the phrase "in conformity with its type design". In doing so, we are guided by the oft-stated formulation that statutory provisions are to be read "in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the *Act*, the object of the *Act* and the intention of Parliament"<sup>1</sup>.

[49] We are of the view that the Minister's interpretation conflates the two distinct concepts of "fit and safe state for flight" (*CARs* paragraph 507.02(c)) and "conformity with ... type design" (*CARs* paragraph 507.02(b)). We are also of the view that to interpret the provision as the Minister proposes is to strain the definitions of "airworthiness" and "type design" in a way that is contrary to the plain meaning of the terms, does not comport with the scheme of the *CARs*, and is unnecessary to advance the purposes of the *CARs*. We are further of the view that this interpretation would lead to regulatory and operational uncertainty. We therefore reject the Minister's interpretation of "in conformity with its type design".

[50] As already observed, the definition of "type design" begins with the words "type design **means**", not "type design **includes**". What follows is a highly particularized list. This strongly suggests that this definition is intended to be exhaustive. This must be contrasted with the very broadly-worded alternative heading of airworthiness, namely that the aircraft must be in a "fit and safe state for flight". It is therefore our view that "conformity to type design", properly interpreted, is restricted to those items enumerated in the definition of "type design", leaving all residual issues of airworthiness to be determined instead on the basis of whether the aircraft is in a fit and safe state for flight.

[51] This is directly contrary to the Minister's view that "type design" is the residuary category for all safety items not explicitly listed in a maintenance manual. In particular, the

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<sup>1</sup> Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6<sup>th</sup> ed. (Markham, ON, LexisNexis Canada, 2014) at pp. 9-10.

definition of “type design” does not state, or even imply, that any defect that is not explicitly addressed in a maintenance manual therefore automatically falls within the definition of “type design”. We find that this strongly militates against the Minister’s preferred interpretation of “type design”.

[52] On a more practical level, based both on the *CARs* definitions and the scheme of the *CARs* generally, it is our view that the “conformity” requirement relates to the design of the part, whereas the “fit and safe state for flight” requirement relates to the present condition of the part. On a plain reading, the *CARs* provide for two logically and conceptually distinct criteria for “airworthiness”, both of which must be met:

- a. Firstly, the part must be properly designed. This criterion is met if the design of the aircraft or part has been approved, as per the type design or any subsequent approval.
- b. Secondly, that properly designed part must be properly maintained throughout its working life. This criterion is met at any given time if the part is in a fit and safe state for flight, as informed or directed by the instructions for continuing airworthiness and all other relevant maintenance criteria.

[53] Accordingly, an aircraft part “conforms” to the type design if it is a part provided for in the type design (or supplementary type design), or is an approved replacement, or has been repaired or overhauled in an approved manner, and has not exceeded any limitation in the “limitations section” or the TCDS. For completeness, we mention that the exceedance of any operating limitation, such as aircraft weight and speed limitations, is also a matter going to conformity with type design, since these operating limits are included in the *CARs* definition of “type design”.

[54] We also note that a “repair” may involve a modification to an aircraft or part. If the part is modified, then the part is no longer as designed, and therefore the question of conformity to type design is properly engaged. However, the present state or condition of the aircraft part is an entirely different matter from its design. Rather, this must be considered under the rubric of “fit and safe state for flight”. This area is the core subject matter of aircraft maintenance, rather than aircraft design. There is a robust regulatory system in place to establish and oversee the standards for maintenance performed by AMEs and approved maintenance organizations (AMOs).

[55] We do not see it as accidental that the *CARs* have been drafted so as to give a narrow ambit to the issue of “conformity to type design.” Otherwise, if the Minister’s interpretation were correct, then every crack or bulge in a hinge or fairing, every popped rivet, every dent, bend or erosion of a part, every chip in paint, every crazing of a window, any amount of leaking fluid, or any of a host of routine defects that are not expressly addressed in a particular maintenance manual, would become an insurmountable obstacle to an AME. The AME could certify the aircraft as being fit and safe, but this would be insufficient. Following the Minister’s logic, it would not conform with type design and therefore would be grounded until a Transport Canada inspector had also certified it.

[56] Further, we must consider the practical implications of the Minister’s interpretation. As stated by Transport Canada in its Maintenance and Manufacturing Staff Instructions, MSI 46, “[d]uring the normal course of events, an aircraft will develop defects almost as a matter of

routine” (Exhibit A-3). If the Minister’s interpretation were correct, then many aircraft in Canada, although perfectly fit and safe, would also be non-conforming to various minor degrees and therefore grounded. Given the frequent and diverse nature of minor defects and the limited resources of Transport Canada, the potential for widespread disruption to the Canadian air transportation system is obvious. It is for this reason we say that the Minister’s interpretation would lead to an impractical, unnecessary, and untenable result. In our view, had this interpretation and its sweeping consequences been intended by the drafters of the *CARs*, it would have been set out in different and more explicit terms.

[57] This interpretation would also lead to considerable uncertainty since, under that interpretation, the bounds of “conformity to type design” are hard to define and potentially limitless. If this were correct, an AME or AMO would rarely be certain that any given part (other than a new one) is conforming in every possible way, and therefore would be hard pressed to ever sign a maintenance release with confidence. This would run contrary to much of the authority clearly granted to licensed AMEs and AMOs under the *CARs* to issue maintenance releases certifying that an aircraft or part is airworthy, that is, both safe and conforming. In other words, this interpretation is a poor fit with the scheme of the *CARs* themselves.

[58] For completeness, we wish to comment more fully on the primary argument made by the Minister. The Minister firstly argued that the design specifications for the aircraft would have included a new, fully intact gear door hinge. The Minister also argued that no type certificate would ever have been granted on the basis of a test aircraft with a cracked gear door hinge. From these two propositions, the panel was asked to conclude that an aircraft with a cracked gear door hinge does not conform to its type design.

[59] Despite their initial emotive attraction, we do not find these propositions to be helpful in answering the legal question of what is actually meant by “conformity with its type design”.

[60] The type design is the template for the manufacture of new aircraft. So, all new aircraft will be in new condition and will conform, but to assert the converse is to fall into the logical fallacy known as “denying the antecedent” In other words, from the Minister’s premise, it does not necessarily follow that an aircraft that is **not** in factory-fresh condition is therefore **not** in conformity. We therefore cannot accept the Minister’s chain of logic. It does not displace the standard legal tools of statutory interpretation that we have applied above.

[61] Further, the argument knows no bounds. Why stop at a gear door hinge? Based on identical logic, any imperfection short of the original design, however minor, would potentially constitute a non-conformity. Not only is this impractical, this argument taken to its logical conclusion would ultimately expand the scope of “conformity” so as to subsume the “fit and safe state” requirement to the point of redundancy. In effect, the concept of “fit and safe state” would be reduced to little more than a maintenance exception to the governing rule that the aircraft must, as a matter of **conformity**, be in new condition. We do not see any sign in the *CARs* that paragraph 507.02(b) is intended to overwhelm paragraph 507.02(c) in this manner. As a matter of statutory construction, an interpretation which avoids surplusage is to be preferred.

[62] Similarly, the alleged condition of a postulated prototype aircraft is not relevant. The condition of a prototype aircraft is **not** part of the type design as defined in the *CARs*. A type

certificate certifies the **design** of an aircraft **type**, not the **fitness** of a specific aircraft or prototype.

**(5) Major and Minor Defects**

[63] For its part, the appellant argued that, under the maintenance manuals for the BE1900, damage to a non-structural element such as the gear door hinge was classified as “minor damage”. We were asked to conclude that minor damage did not go to conformity with the type certificate. In support, the appellant cited the EA, which classified the damage as minor. For its part, the Minister rejected the significance of any such distinction.

[64] In our view, although we agree that the damage was minor, this case does not turn on such a distinction. Rather, it turns on the legal question of whether, under the *CARs*, damage or any other defect, by itself, is a matter going to “conformity to type design”, “fit and safe state for flight”, or both.

[65] The appellant had placed into evidence Section 51-00-00 of the Beech 1900D Maintenance Manual, entitled STANDARD PRACTICES AND STRUCTURES. In that section, there is a reference to **Secondary Structural Components** (Exhibit A-1). The annotation thereunder states that “[i]n the event of failure, the following secondary structural components will require immediate attention, but will not necessarily endanger the safety of the airplane and/or the passengers”. One of the components listed is “non-structural doors and covers”. We agree that the gear door is such a structure. The Minister pointed out that these parts require “immediate attention”. We note that “attention” would include inspection, and perhaps a maintenance release, but may not necessarily require an immediate repair. Whether the part is in a fit and safe state for flight would be a question of maintenance judgment. The annotation does not address conformity to type design. Rather, it is formulated in terms of safety and fitness for flight. We also observe that in this case the “immediate attention” given was to engage the DAR, who certified the aircraft as airworthy for the next 25 flight hours.

**(6) Conclusions of Law**

[66] For all of these reasons, when reading the relevant sections in their grammatical and ordinary sense, in context and in a manner that is harmonious with the scheme of the *Act*, the object of the *Act* and the intention of Parliament, we are forced to reject an interpretation of the *CARs* that would deem any aircraft which is not in new condition and not within a tolerance explicitly specified in the instructions for continued maintenance, to be non-conforming. Such an aircraft might well be unfit, or not in a safe state for flight. But to say that it is **also** non-conforming is to add an additional and unnecessary element to the interpretation of the *CARs* that is neither found in a plain reading nor supported by the scheme or purpose of the regulations.

[67] Rather, our view is that the occurrence of a **defect** in an aircraft part does not, in itself, raise a question of its conformity to type design. Rather, it brings into question whether the part is in a fit and safe state for flight.

**(7) Application to this Case**

[68] In the present case, there was no argument or evidence that the gear door hinge was anything but a genuine original or replacement part. There was no argument or evidence that it had been modified, or that it had exceeded a time or cycle limitation set out in the limitations section or in the TCDS. Therefore in law it conformed to its type design. Since the Minister has disclaimed the alternative airworthiness argument that the aircraft was unfit or in an unsafe state for flight, we see no grounds for the charge against the appellant, and therefore dismiss it.

**B. Conclusion**

[69] The Minister has not proven that the B1900 aircraft in question did not conform to its type design. The Minister does not contest that the aircraft was safe and fit for flight. Therefore the Minister has not proven, on a balance of probabilities, that the flight authority was not in force. This being a required element of the offence, the monetary penalty cannot stand.

**III. DECISION**

[70] The appeal is allowed. The monetary penalty in the amount of \$5,000 is cancelled.

February 20, 2020

(Original signed)

Reasons for the  
appeal decision: Andrew Wilson, Member (chairing)

Concurred by: James E. MacDonald, Member

Teryl Robbins, Member

**Appearances**

For the Minister: Eric Villemure

For the Appellant: Timothy Trembley