



## TRANSPORTATION APPEAL TRIBUNAL OF CANADA

**Citation:** *Ian Murray Auld v. Canada (Minister of Transport)*, 2019 TATCE 55 (Ruling)

**TATC File No.:** C-4308-33

**Sector:** Aviation

### **BETWEEN:**

**Ian Murray Auld**, Applicant

- and -

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

**Heard by:** Written submissions

**Before:** Jacqueline Corado, Vice-Chairperson and Member

**Rendered:** December 23, 2019

### **RULING**

**Held:** The Tribunal does not have the jurisdiction to consider an appeal on a ruling for costs.

## **I. BACKGROUND AND CONTEXT**

[1] On October 17, 2019, the Transportation Appeal Tribunal of Canada (Tribunal) issued its ruling on the applicant's request for costs.

[2] The letter that accompanied the Tribunal's ruling stated that there is no right to appeal on a ruling rendered by the Tribunal on a request made under section 19 of the *Transportation Appeal Tribunal of Canada Act (TATC Act)*.

[3] On November 4, 2019, the applicant submitted a request to appeal a cost ruling and upon being referred to the letter accompanying the ruling, he made submissions in relation to the Tribunal's jurisdiction to hear an appeal on costs.

## **II. ISSUE**

[4] This is a ruling on the Tribunal's jurisdiction as provided by its enabling legislation and as expressly provided for in other transportation Acts.

[5] Therefore, the question that is the issue in this matter is: Does the Transportation Appeal Tribunal of Canada have jurisdiction to consider appeals on cost rulings?

## **III. ANALYSIS**

[6] Administrative tribunals cannot exceed the powers granted by the legislature. As stated by the Supreme Court of Canada: "Administrative bodies and tribunals are creatures of statute; the will of the legislature as it appears therein must be respected." (*Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, paragraph 54).

[7] In order to decide on a question of jurisdiction, the principles of statutory interpretation need to be applied to determine what powers were granted by Parliament.

[8] The Supreme Court has clearly endorsed Elmer Driedger's approach, commonly known as the modern principle, as the guide to statutory interpretation:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, para. 20-21; *Medovarski v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 539, para. 8; *British Columbia Human Rights Tribunal v. Schrenk*, [2017] 2 S.C.R. 795, para. 30).

### **Object and Scheme of the TATC Act**

[9] First of all, Parliament gave the Transportation Appeal Tribunal of Canada ("the Tribunal") jurisdiction in respect of **reviews and appeals as expressly provided for** under various Acts (subsection 2(2) of the *TATC Act*):

2 (2) The Tribunal has jurisdiction in respect of reviews and appeals as expressly provided for under the *Wrecked, Abandoned or Hazardous Vessels Act*, the *Aeronautics Act*, the *Canada*

*Shipping Act, 2001*, the *Marine Transportation Security Act*, the *Railway Safety Act* and any other federal Act regarding transportation.

[10] As is the case for all the Acts named in subsection 2(2) of the *TATC Act*, this jurisdiction is in relation to holding reviews and appeals of monetary penalties, licencing decisions, *ex parte* motions in some cases, orders for immediate threats in some other cases, etc. None of those Acts named in subsection 2(2) expressly give the Tribunal jurisdiction to grant costs.

[11] Then, in subsection 2(3) of the *TATC Act*, Parliament gives the Tribunal a more restrictive jurisdiction in respect of reviews and appeals under other Acts. This jurisdiction is in connection with administrative monetary penalties only.

2 (3) The Tribunal also has jurisdiction in respect of reviews and appeals in connection with administrative monetary penalties provided for under sections 177 to 181 of the *Canada Transportation Act*, sections 43 to 55 of the *International Bridges and Tunnels Act*, sections 129.01 to 129.19 of the *Canada Marine Act*, sections 16.1 to 16.25 of the *Motor Vehicle Safety Act*, sections 39.1 to 39.26 of the *Canadian Navigable Waters Act* and sections 130.01 to 130.19 of the *Marine Liability Act*.

[12] Once again, there is no mention in any of those Acts that Parliament gave the Tribunal jurisdiction to order costs.

### **Object and Scheme of the *Aeronautics Act***

[13] The object of the *Aeronautics Act* is to govern civil aviation in Canada. To do so, Parliament has mandated the Minister of Transport with the responsibilities enumerated in section 4.2 of the *Act* and powers to enforce the *Act* through different enforcement actions such as issuing monetary penalties.

[14] The *Aeronautics Act* states that if the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister may decide to assess a monetary penalty in respect of the alleged contravention (subsection 7.7(1)). The Minister believed that Mr. Auld had contravened section 602.01 of the *Canadian Aviation Regulations (CARs)* and gave him a notice with a monetary penalty of \$1,000.

[15] The *Aeronautics Act* expressly provides the jurisdiction to the Tribunal to review the administrative monetary penalty. Subsection 7.91(1) states that a person who is given a notice under subsection 7.7(1) and who wishes to have the facts of **the alleged contravention or the amount of the penalty reviewed** shall make a request for review to the Tribunal. Mr. Auld made such a request and the Tribunal assigned a member to hear the case.

[16] The Tribunal member who hears the case **determines if the person has contravened the designated provision or not** (section 8 of the *Aeronautics Act*).

[17] That determination on whether a person contravened the designated provision or not can be appealed by either party (subsection 8.1(1) of the *Aeronautics Act*). The member who heard the review determined that Mr. Auld had not contravened the designated provision in the CARs and this determination is not under appeal.

[18] If the determination is appealed, the appeal panel of the Tribunal may dispose of the appeal by dismissing it or allowing it and, in allowing the appeal, the panel may substitute its decision for the **determination appealed against** (subsection 8.1(3) of the *Aeronautics Act*).

[19] Nothing in the scheme of the *Aeronautics Act* provides recourse for costs, let alone an appeal of a cost ruling.

### **The Scope and Nature of an Appeal at the Tribunal**

[20] In section 14 of the *TATC Act*, the legislator provided the scope and nature of the Tribunal's jurisdiction on an appeal:

**14** An appeal shall be on the **merits based on the record of the proceedings before the member from whose determination the appeal is taken**, but the appeal panel shall allow oral argument and, if it considers it necessary for the purposes of the appeal, shall hear evidence not previously available. [emphasis added]

[21] An appeal shall be on the merits. The merits of this case are in relation to the expressly given jurisdiction to review the monetary penalty for the alleged contravention of whether Mr. Auld violated section 602.01 of the *CARs*. A ruling on costs does not dispose of the merits of whether Mr. Auld violated the designated provision.

### **The Scope and Nature of the Tribunal's Power to Order Costs**

[22] Parliament gave the Transportation Appeal Tribunal of Canada jurisdiction to award costs in section 19 of the *TATC Act*.

[23] This provision was added in 2003 when the Tribunal replaced its predecessor, the Civil Aviation Tribunal.

[24] The Civil Aviation Tribunal did not have jurisdiction to award costs and still had jurisdiction to conduct reviews and appeals of monetary penalties for alleged violations of the *Aeronautics Act* and the *CARs*.

[25] Section 19 opens the door to an application, other than a request for a review or an appeal, in connection with a hearing that took place before the Tribunal under a statute referred to in subsection 2(2) or (3) of the *TATC Act*.

[26] A ruling on costs is incidental to the Tribunal's proceeding on the merits; when successful, it is the reimbursement of expenses incurred after the disposition of a case that went to a hearing.

[27] It was the intent of Parliament to give the Tribunal powers to award costs but it was also its intention to limit the situations where costs could be granted to three specific grounds. All three grounds are in relation to a hearing that takes place under a statute referred to in subsection 2(2) or (3) of the *TATC Act*.

[28] Section 19 of the *TATC Act* is not part of the expressly provided jurisdiction to conduct appeals under the *Aeronautics Act*. The established scheme in the *Aeronautics Act* for an appeal

mechanism to a determination on whether a person contravened a designated provision does not include or reference a request for costs.

[29] The facts of a case at a review hearing could show that the Tribunal was seized for reasons that were frivolous and vexatious, but even a large and liberal interpretation of the application of paragraph 19(1)(a) of the *TATC Act* could not go as far giving the Tribunal appeal jurisdiction that was not given by Parliament.

[30] The applicant raises the very compelling argument that the Tribunal considered an appeal on costs in *Kipke v. Canada (Minister of Transport)*, 2013 TATCE 13. I find that the Tribunal exceeded its jurisdiction by having previously considered an appeal on costs in *Kipke* for the reasons already explained.

[31] Therefore, for all the reasons above, I cannot accept the applicant's argument that considerations on costs are an intrinsic part of the review process or that Parliament gave the Tribunal jurisdiction to hear an appeal of a ruling on costs.

#### **IV. RULING**

[32] The Tribunal does not have the jurisdiction to consider an appeal on a ruling for costs.

December 23, 2019

(Original signed)

Jacqueline Corado  
Vice-Chairperson and Member

#### **Appearances**

For the Minister: Mathieu Joncas  
For the Applicant: Joe Barnsley