



## TRANSPORTATION APPEAL TRIBUNAL OF CANADA

**Citation:** *Robert Carducci v. Canada (Minister of Transport)*, 2022 TATCE 21 (Ruling)

**TATC File No.:** O-4583-64

**Sector:** Aviation

### **BETWEEN:**

**Robert Carducci**, Applicant

- and -

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

**Heard by:** Videoconference on January 11, 2022

**Before:** Jennifer Webster, Member

**Rendered:** April 22, 2022

### **RULING**

**Held:** The applicant's motion to have additional documents disclosed by the respondent is partially granted. The Tribunal orders the Minister of Transport to provide the following records to the applicant within 90 days of the date of this ruling:

- Staff Instructions, Supplementary Staff Instructions and other departmental documents when performing work/tasks that applied to the engineering unit in the Ontario Regional Aircraft Certification Office as of August 31, 2018. (Some of the records described in category 1 of the applicant's disclosure request.)
- All internal TC correspondence related to the incidents when the applicant is alleged to have made unfounded allegations, as identified in grounds 2 and 7 in the appendix to the Notice of Cancellation. (Some of the records described in category 5 of the applicant's disclosure request.)

- All internal TC documents related to the reason for the transfer of Mr. Alex Pompei from Aircraft Certification to elsewhere at TC. (Some of the records described in category 15 of the applicant's disclosure request.)

The Tribunal Registry will reach out to the parties to coordinate the scheduling of a hearing that is expected to occur in the fall.

## **I. BACKGROUND**

[1] On December 16, 2019, Transport Canada (TC) issued a Notice of Cancellation (Notice) to Mr. Robert Carducci to cancel his Design Approval Representative Delegation of Authority Certificate (DAR Certificate). The Notice was issued pursuant to paragraph 7.1(1)(b) of the *Aeronautics Act (Act)*.

[2] On January 13, 2020, the applicant filed a request for review by the Transportation Appeal Tribunal of Canada (Tribunal).

[3] The Tribunal scheduled a Case Management Conference (CMC) for January 7, 2021. The CMC was adjourned on consent and rescheduled for July 7, 2021. At the CMC, the Tribunal scheduled hearing dates for the review hearing in January 2022. The applicant also identified that, although he had received a substantial disclosure package from the Minister of Transport (Minister) in September 2020, he had requested additional disclosure and the parties were working to address this request.

[4] A second CMC was held, at the applicant's request, on December 8, 2021, about the outstanding disclosure request. The applicant identified that he was seeking an order from the Tribunal to require disclosure of certain records from the Minister. A hearing of the applicant's preliminary motion for disclosure was held on January 11, 2022, with written submissions provided by the parties in advance of the hearing.

## **II. ISSUE**

[5] The issue in this preliminary motion is whether additional documents should be disclosed by the respondent to the applicant. In considering this issue, the Tribunal must determine the scope of the disclosure required in a review hearing and then whether the requested records are within the scope.

## **III. ANALYSIS**

### **A. Legislative framework**

[6] Section 7.1 of the *Act* sets out the applicable provisions related to the cancellation of a DAR Certificate and the review of a decision to cancel. The relevant provisions to this disclosure motion are as follows:

**7.1 (1)** If the Minister decides to suspend, cancel or refuse to renew a Canadian aviation document on the grounds that

(a) the holder of the document is incompetent,

(b) the holder or any aircraft, airport or other facility in respect of which the document was issued ceases to meet the qualifications necessary for the issuance of the document or to fulfil the conditions subject to which the document was issued, or

(c) the Minister is of the opinion that the public interest and, in particular, the aviation record of the holder of the document or of any principal of the holder, as defined in regulations made under paragraph 6.71(3)(a), warrant it,

the Minister shall, by personal service or by registered or certified mail sent to the holder or the owner or operator of the aircraft, airport or facility, as the case may be, at their latest known address, notify that person of the Minister's decision.

[...]

(2) A notice under subsection (1) shall be in such form as the Governor in Council may by regulation prescribe and shall, in addition to any other information that may be so prescribed,

(a) indicate, as the case requires,

(i) [Repealed, 2001, c. 29, s. 37]

(ii) the nature of the incompetence of the holder of the Canadian aviation document that the Minister believes exists, the qualifications necessary for the issuance of the document that the Minister believes the holder of the document or the aircraft, airport or facility in respect of which the document was issued ceases to have or the conditions subject to which the document was issued that the Minister believes are no longer being met or complied with, or

(iii) the elements of the public interest on which the decision of the Minister is based; and

(b) state the date, being thirty days after the notice is served or sent, on or before which and the address at which a request for a review of the decision of the Minister is to be filed in the event the holder of the document or the owner or operator concerned wishes to have the decision reviewed.

[...]

(6) At the time and place appointed under subsection (5) for the review of the decision, the member of the Tribunal assigned to conduct the review shall provide the Minister and the holder of the Canadian aviation document or the owner or operator affected by the decision, as the case may be, with an opportunity consistent with procedural fairness and natural justice to present evidence and make representations in relation to the suspension, cancellation or refusal to renew under review.

## **B. The scope of disclosure in a review hearing**

### **(1) *The positions of the parties***

[7] The applicant argues that the disclosure of the requested records is required in order for him to have “an opportunity consistent with procedural fairness and nature justice to present evidence and make representations” as required in the review hearing by subsection 7.1(6) of the *Act*. He argues that the requested records are relevant to the issues in the review hearing and that, therefore, the Minister should be required to disclose the records.

[8] The applicant relies on the decision of the Civil Aviation Tribunal<sup>1</sup> in *Lionel Gartner v. Minister of Transport*, 1997 CAT File No. W-1278-02 (Appeal) (*Gartner*), to support his request for disclosure. In *Gartner*, the Civil Aviation Tribunal considered the principles of procedural fairness and natural justice in the context of the cancellation of a private pilot licence. The Civil

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<sup>1</sup> The Civil Aviation Tribunal was the predecessor to the Transportation Appeal Tribunal of Canada.

Aviation Tribunal adopted with approval the principle of administrative law that “the right to be heard entails an opportunity to know the case against them and to dispute, correct or contradict anything prejudicial to one’s position.” In addition, the Civil Aviation Tribunal noted that, in situations involving the discipline of professionals or the revocation of a licence to carry on business, the most complete and detailed disclosure is required. The applicant argues that, in the present matter, he faces a comparable penalty to the penalty in *Gartner* because he asserts that the cancellation of his DAR Certificate is equivalent to professional discipline. As a consequence, the applicant urges the Tribunal to follow the *Gartner* decision and to order the most complete and detailed disclosure.

[9] The applicant argues that the Tribunal should consider and apply the principles of procedural fairness outlined by the Supreme Court of Canada (SCC) in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 (*Baker*). In *Baker*, the SCC identified a non-exhaustive list of factors to be considered in determining the content of the duty of procedural fairness in each administrative law context. These factors are found at paragraphs 22 to 28 in *Baker* and may be summarized as follows:

- the nature of the decision being made and the process followed in making it;
- the nature of the statutory scheme and the terms of the statute pursuant to which the administrative body operates;
- the importance of the decision to the individual or individuals affected;
- the legitimate expectations of the person challenging the decision; and
- the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures.

[10] The applicant argues that expansive disclosure is required when the *Baker* factors are applied in this matter because the decision to cancel his DAR Certificate had a significant impact on his livelihood and his professional reputation. Moreover, he identifies that he held the DAR Certificate for 40 years and he had invested resources and time into the relationship with TC. Therefore, according to the applicant, the nature and importance of the decision mean that he should have greater procedural fairness in the review hearing. He relies on the decision of the Federal Court of Appeal (FCA) in *Sheriff v. Canada (Attorney General)*, 2006 FCA 139, in which the FCA reviewed the *Baker* principles and confirmed that increased disclosure was justified in circumstances where there are significant consequences for the professional person’s career and status in the community.

[11] The applicant submits that procedural fairness in these circumstances requires that the Minister disclose to him all relevant records to ensure that he can fully answer and defend the allegations in the Notice.

[12] The Minister made no argument related to the *Baker* factors. Rather, the respondent argues that the applicant is not entitled to further disclosure because the Minister has already met its full obligation to disclose based on the *Act* and the relevant case law. According to the Minister, the scope of disclosure is prescribed by the *Act*, and nothing further is required.

[13] The respondent submits that the duty of procedural fairness only requires that an administrative decision-maker disclose the information that they relied upon in reaching their decision because such disclosure ensures that the individual knows the case they have to meet (see *May v. Ferndale Institution*, 2005 SCC 82 [May]). It argues that the additional disclosure sought by the applicant involves records that were not considered by the Minister in its decision to cancel and that, therefore, procedural fairness does not require these records to be provided. It relies on the decision of the Federal Court (FC) in *Simmonds v. Canada (Attorney General)*, 2013 FC 967, in which the FC held that there was no breach of disclosure requirements where irrelevant or immaterial facts are not disclosed or where there was no reliance on those facts in making the administrative decision.

[14] The respondent states that it provided a notice of cancellation in the prescribed form set out in subsection 7.1(2) of the *Act* and that this notice satisfies its disclosure obligation. Moreover, the respondent argues that, from a pure statutory standpoint, the Notice of Cancellation exceeded the statutory notice requirement and provided more disclosure through 10 pages of examples of specific incidents to demonstrate the Minister's considerations when it concluded that the applicant no longer fulfilled the conditions of his DAR Certificate. The Minister also provided a disclosure package of over 600 pages of materials in September 2020 that included records related to every incident referenced in the Notice. According to the respondent, the Minister has provided everything required for the applicant to properly respond and the additional records being sought are either irrelevant or immaterial to the decision or involve a fishing expedition based on the applicant's speculation.

[15] The respondent further argues that the applicant can access the requested records through a request under the Access to Information and Privacy (ATIP) process. It submits that, although procedural fairness does not require the additional disclosure sought by the applicant, he may nonetheless seek the records through an ATIP request, if he believes they are important to his case. The respondent relies on the FC's decision in *Ghahraman-Ebrahimi v. Canada (Attorney General)*, 2020 FC 746, to support its position that requiring a party to obtain documents through the ATIP process is not a breach of procedural fairness.

**(2) *The test for additional disclosure***

[16] The Tribunal has no specific disclosure provisions for its review hearings in its enabling statute or its rules. However, the Tribunal is required by subsection 7.1(6) of the *Act* to conduct its review in a manner consistent with procedural fairness and natural justice. These principles of administrative law are based on the right of the applicant to know the case he has to meet and to respond to the allegations. The question is, therefore, what scope of disclosure in a review hearing is consistent with procedural fairness and natural justice?

[17] The Civil Aviation Tribunal considered the scope of disclosure required by the *Act* in *Leslie G. Marsh v. Minister of Transport*, 1996 CAT File No. C-1095-02 (Appeal) (*Marsh*). The Tribunal notes that neither party raised this case in its submissions, and that this decision is not binding on the Tribunal. Nonetheless, the Tribunal finds the reasoning in *Marsh* helpful in its analysis of the duty of the disclose. In *Marsh*, similar to the present matter, the applicant had requested supplemental disclosure from the Minister and this request had been denied. The Civil

Aviation Tribunal held that Minister had a duty to disclose all relevant materials and explained the application of this principle in the following paragraph:

The Appellant [Marsh] argues that information ought not to be withheld if there is a reasonable possibility that withholding it will impair the right of the accused to make full answer and defence. That principle is agreed, but the relevance of that information to the case at hand is the criterion by which the principle must be applied. It is not sufficient that the information concerned is on the subject matter; it must be of such direct relevance that it might be expected to be adduced at the hearing as part of the defence evidence and/or argument.

[18] The SCC has examined the scope of the duty of disclosure in administrative law proceedings in *May*. The respondent relies on the SCC's decision in *May* for the proposition that the broad disclosure principles articulated by the SCC in *R. v. Stinchcombe*, [1991] 3 SCR 326 (*Stinchcombe*), did not apply in the administrative context. In *Stinchcombe*, the Court held that the Crown must disclose all information relevant to an accused in relation to an indictable offence, and that no information should be withheld, if doing so would impair the accused's ability to make a full answer and defence. In *May*, the SCC noted that although *Stinchcombe* might not apply to administrative law decisions, the requirements of procedural fairness should be assessed contextually in every circumstance. The SCC explained the requirements of procedural fairness more fully as follows:

92 In the administrative context, the duty of procedural fairness generally requires that the decision-maker discloses the information he or she relied upon. The requirement is that the individual must know the case he or she has to meet. If the decision-maker fails to provide sufficient information, his or her decision is void for lack of jurisdiction. As Arbour J. held in *Ruby*, at para. 40:

As a general rule, a fair hearing must include an opportunity for the parties to know the opposing party's case so that they may address evidence prejudicial to their case and bring evidence to prove their position . . . .

93 Therefore, the fact that *Stinchcombe* does not apply does not mean that the respondents have met their disclosure obligations. As we have seen, in the administrative law context, statutory obligations and procedural fairness may impose an informational burden on the respondents.

[19] Based on its analysis of procedural fairness in *May*, the SCC found that the respondents had not met their disclosure obligations because they failed to disclose all relevant information.

[20] Similarly, in the present matter, the scope of the respondent's disclosure obligation should be determined from the *Act* as well as from an application of the principles of procedural fairness. The Tribunal finds that the Minister has met the disclosure requirements of subsection 7.1(2) of the *Act*. In the Notice, the Minister identified that the applicant had ceased to meet the conditions of his DAR Certificate and outlined the grounds for this conclusion with details of 47 incidents in support of the grounds.

[21] The applicant argues that he is entitled to more disclosure than the requirements for the Notice of Cancellation set out in subsection 7.1(2) of the *Act* to ensure he is afforded procedural fairness in accordance with the *Baker* factors. The applicant urges the Tribunal to find that he is entitled to the most complete disclosure because the Minister's decision negatively impacted his livelihood and his reputation.

[22] The Tribunal is not able to engage in a fulsome analysis of the *Baker* factors because the parties did not provide evidence and submission about the factors and their application in the present matter. The Tribunal does, however, agree that procedural fairness in the review hearing requires that the Minister provide further disclosure to the applicant based on the nature and importance of the decision to cancel the DAR Certificate. The Tribunal notes that the applicant claims this higher level of procedural fairness based on a general assertion that his livelihood and reputation have been affected without offering any evidence to support this claim. Despite this, the Tribunal accepts that the decision to cancel the DAR Certificate is an important decision to the applicant and concludes that he is entitled to a higher level of procedural fairness based on this factor.

[23] The Tribunal finds that the Minister has a disclosure obligation in the context of the review process beyond the statutory minimum requirements in order to ensure procedural fairness, and that the applicant is entitled to the disclosure of records that are relevant to the issues in the hearing. As noted by the Civil Aviation Tribunal in *Marsh*, the purpose of disclosure is to permit the applicant to make full answer and defence. The analysis of whether requested records are relevant must, therefore, be conducted in the context of the subject matter of the review hearing. The Tribunal finds the following definition of relevance from the Ontario Superior Court of assistance in this analysis: “[a] document is ‘relevant’ if it is logically connected to and tending to prove or disprove a matter in issue” (see *Sky Solar (Canada) Ltd. v. Economical Mutual Insurance Company*, 2015 ONSC 4714 at paragraph 25).

### **C. The relevance of the requested records**

#### ***(1) Relevance is related to the issues in the review hearing***

[24] The Tribunal finds that procedural fairness requires the respondent to disclose relevant records to the applicant in addition to the statutory disclosure already provided. Relevance is necessarily assessed in relation to the issues in the review hearing, and these issues are defined by the Notice in which the Minister set out the reasons for cancellation. The Minister identified that the applicant’s DAR Certificate had been cancelled because he had ceased to fulfill the conditions set out in the Airworthiness Manual (AWM) under the CARs and his Engineering Procedures Manual (EPM). The Minister further outlined that the applicant had engaged in a pattern of conduct and behaviour over a five-year period that demonstrated he was not in compliance with the conditions in the AWM and EPM.

[25] In an appendix attached to the Notice, the Minister set out seven grounds in support of its decision to cancel the applicant’s DAR Certificate. The issues in the hearing will be focused on these grounds because they are the reasons identified by the Minister for its conclusion that the applicant has ceased to meet the conditions of his DAR Certificate. The Tribunal’s assessment of the relevance of the requested records will necessarily be related to these seven grounds set out below. After each ground, the Minister provided descriptions of specific incidents that occurred between 2014 and 2019:

- Ground 1: R. Carducci demonstrated his inability to effectively carry out his duties by repeatedly disrespecting TC officials and the department itself, through his actions and in written communication.



- Ground 2: R. Carducci demonstrated his inability to effectively carry out his duties by repeatedly making unfounded allegations regarding the competence of TC officials.
- Ground 3: R. Carducci demonstrated his inability to effectively carry out his duties by repeatedly challenging the technical findings made by TC officials and disputing TCCA [Transport Canada Civil Aviation] interpretations of applicable standards in an inappropriate manner.
- Ground 4: Despite the following TC's repeated warnings, actions and in-person meetings specifically addressing the inappropriate temperament and conduct as a delegate, R. Carducci repeatedly failed to improve his treatment of TC officials with whom he engaged in the course of his duties.
- Ground 5: R. Carducci demonstrated his inability to effectively carry out his duties by refusing to meet and interact with TC officials directly as required under the terms of his Authorization.
- Ground 6: R. Carducci demonstrated his inability to effectively carry out his duties by interacting with his previous designated TC OPI [Office of Primary Interest] in such a harassing manner that the TC Technical Team Lead, Engineering, directed R. Carducci to cease communications with the TC official.
- Ground 7: Pursuant to the TC letters for the Consideration of Cancellation of DAR Delegation Authority Certificate #DAR 84, R. Carducci made further unfounded allegations regarding TC officials.

[26] The applicant argues that the issues in this hearing are broader than the identified grounds. He argues that the issues are about the relationship between him and TC and the parties' behaviour within the relationship over a five-year period. He states that the context of the relationship is relevant in any assessment of his patterns of behaviour, temperament and alleged disrespect. In addition, he argues that many of the issues are related to his concerns about the competence and inconsistent directions of certain TC officials. He submits, therefore, that TC policies and staff instructions are relevant to establish the veracity of his claims about the officials' mismanagement.

[27] The Tribunal does not agree with the applicant's characterization of the issues in this review hearing. Although the relationship is the context for the Minister's reasons to cancel the DAR Certificate, the issues have been specifically defined in the Notice and the applicant must demonstrate that the requested records are relevant as logically connected to a matter that must be proved or disproved in this hearing.

[28] The Minister has the burden to prove its allegations as set out in the Notice on a balance of probabilities. This means that the Minister must prove that the applicant ceased to meet the conditions of his DAR Certificate by engaging with TC officials in a disrespectful, inappropriate, and harassing manner, refusing to meet and interact with TC officials, making unfounded allegations about their competence, and failing to improve his conduct, after having been repeatedly directed about the expected behaviour.

[29] The issue of the unfounded allegations is particularly challenging in determining the relevance of the requested disclosure. The Minister will be required to prove that the allegations made by the applicant are unfounded, as set out in the Notice, and the applicant will be seeking to disprove this claim, or more specifically, to prove that his allegations of incompetence on the part of TC officials were founded. It is, therefore, necessary for the Tribunal to evaluate the relevance of the requested records in relation to the incidents in which the Minister has identified that the applicant made “unfounded allegations.” These incidents are found in grounds 2 and 7 and will be discussed in more detail below.

[30] The Tribunal will analyze the applicant’s requested disclosure through an assessment of the relevance of the record to the grounds in the Notice. For clarity, a requested record is only relevant if it is logically connected to the Minister’s allegations in the Notice and if the record would tend to prove or disprove the allegation.

**(2) *The 21 categories of requested records***

[31] The applicant seeks 21 categories of records from the respondent. The parties made submissions about the relevance of each category of records. In addition, the Minister advised that some of the records did not exist. With the exception of those requests, the Tribunal has assessed each category requested by the applicant to determine whether the applicant has demonstrated the relevance of the record.

**(a) *Records that do not exist***

[32] At the hearing of this preliminary motion, the respondent confirmed that no records existed in response to three of the requested categories. These three categories are:

- Category 9: All time reports from TC engineers related to O-15-0296-Task 02
- Category 16: The results of the TC testing performed by Mr. Szwalek and Mr. Turnbull on consistency of the regional engineers in approximately 2014 or 2015
- Category 17: TC training of regional engineers on equivalent safety such as would have occurred for the landing gear gravel guard regarding section 25.487 of the United States Federal Aviation Regulations

[33] The Tribunal cannot order the disclosure of non-existent records, and therefore, these requests are dismissed.

**(b) *Relevant records***

[34] The Tribunal is persuaded that some records in categories 1, 5 and 15 are relevant to the issues in the hearing. The Tribunal finds, however, that the applicant has not sufficiently narrowed these records and it will only, therefore, order a subset of the requested records based on its assessment of the relevance of the records to the issues in the hearing.

[35] In category 1, the applicant requests:

- all of the documents referenced in the email by Mr. Imi Waljee, Associate Director of Operations East at TC, on August 31, 2018, as he states: “Our staff are guided by internal

Staff Instructions, Supplementary Staff Instructions and other departmental documents when performing work/tasks.”

[36] The applicant argues that these documents are necessary to respond to the Minister’s claims in grounds 2 and 7, that he had made unfounded allegations about the competence of TC officials. In addition, the applicant states that the documents are relevant to the issues identified in ground 3, that he had challenged the findings and interpretations of TC officials in an inappropriate manner. The respondent challenges the relevance of these internal documents to the issues in dispute on the basis that whether engineers were consistently following the instructions is not an issue in this hearing.

[37] Mr. Waljee’s email was provided in the context of an email exchange about the communication protocol between the applicant and the Ontario Regional Aircraft Certification Office. Mr. Waljee wrote his email in response to the applicant’s request that the Ontario regional engineers follow an EPM to ensure consistency. The complete text of Mr. Waljee’s email is as follows:

Internal work at TC is accomplished by various processes based on the task at hand. We do not use an EPM or Operations Manuals or Maintenance Policy Manuals, etc. that are required by regulations for approved organizations.

Our staff are guided by internal Staff Instructions, Supplementary Staff Instructions and other departmental documents when performing work/tasks.

[38] The applicant replied to Mr. Waljee on August 31, 2018, with further concerns about the lack of consistency in technical decisions and the loose nature of TC’s policies. Mr. J. David Turnbull, Director of National Aircraft Certification at TC, provided a further response to the applicant’s concerns about consistency by email on October 2, 2018. He noted that he had been copied on the various exchanges between the applicant and Ontario Region and confirmed that consistency of approach was an important principle to him. He further explained his perspective on the differences of opinion between the applicant and TC engineers as follows:

... your apparent pursuit of the policies and procedures on TCCA’s side to somehow satisfy yourself that TCCA staff will be bound by them and that this will prevent differences in opinion on areas of engineering subjectivity would be no more fruitful than a similar pursuit of (your own reference to) the EPM’s that delegates are bound to follow.

It is a fact and always will be that engineers will draw upon their own experiences and engineering judgment, and at times we will hear technical opinions that, as fellow engineers, we struggle to accept as valid. I too see technical opinions (note the difference between an opinion and an official TCCA position on a matter – they are not necessarily the same) amongst staff that vary, and that is part of what I manage every day, as does the management team in the Ontario office. Respectfully, Bob, I have seen in various chains some technical views from yourself that I have found very questionable from an engineering perspective (anecdotal – not generalizing here). In response I do not believe I have witnessed any TCCA staff becoming disrespectful in pointing out our opinions of where we feel your position lacks engineering credibility. In my view none of us as engineers is or should be immune from having our opinions challenged, but there is a way to do this productively versus in an adversarial or personal manner. [...]

[39] The Tribunal accepts that these documents are relevant to the issues raised in grounds 2 and 7 about unfounded allegations, particularly the applicant’s claims about inconsistent technical decisions. If the Minister had relied exclusively on the manner and tone of the applicant’s communication, these policies would not be relevant. However, the Minister states

that the applicant made unfounded allegations about the lack of consistency in the engineers' decision-making about technical standards. The instructions and documents that guide the engineers work are, therefore, relevant to proving or disproving the applicant's allegation of inconsistency among the TC engineers. The Tribunal is, nonetheless, mindful of the cautions outlined in Mr. Turnbull's email that there may be differences of opinion and that such differences may not reflect inconsistencies with TC policies and instructions.

[40] Although the Tribunal is persuaded that the documents as described in Mr. Waljee's email are relevant, it will narrow the production order such that the respondent is only directed to produce the documents that applied to the engineering unit in the Ontario Regional Aircraft Certification Office as of August 31, 2018. The Tribunal does not find that documents related to other units in other regions or at other times are relevant to the grounds outlined in the Notice.

[41] In category 5, the applicant seeks:

- all correspondence involving TC regarding Mr. Carducci's alleged inappropriate behaviour (including all internal TC correspondence, documents, notes, etc.) between 2014 and 2019.

[42] According to the applicant, the records in category 5 are required to enable him to challenge the conclusion that he was not able to effectively carry out his duties. In particular, he argues that he requires all records for the five-year period because the entire relationship should be examined to understand whether the identified incidents were the only incidents of alleged inappropriate behaviour. The applicant submits that, if there were other alleged incidents, such incidents are relevant to demonstrate the context of the relationship and that TC officials did not respond to all allegations.

[43] The respondent argues that the request in category 5 is overly broad because the applicant seeks information related to any inappropriate behaviour, even when the Minister did not consider the behaviour in its decision to cancel the DAR Certificate. Moreover, the respondent argues that it has provided all TC correspondence related to the incidents identified in the Notice.

[44] Since the applicant alleges that these records are required to challenge the general conclusion that he had an inability to effectively carry out his duties, the Tribunal is satisfied that the documents requested are relevant to answer to all seven of the alleged grounds in the Notice. However, The Tribunal finds that the records requested in category 5 are relevant only to the extent that they relate to the specific incidents relied upon by the Minister in the decision to cancel the applicant's DAR Certificate. Moreover, the Tribunal has carefully reviewed the disclosure package already provided by the Minister and it finds that the Minister has disclosed the relevant TC correspondence that fits within the records requested in category 5 for all incidents identified in the Notice except those related to claims of unfounded allegations. Therefore, the Tribunal will order the Minister to disclose the internal TC correspondence only related to the incidents identified in grounds 2 and 7 in which the Minister claims that the applicant has made unfounded allegations regarding the competence of TC officials. For clarity, these incidents relate to the following claims made by the applicant, as identified in the grounds 2 and 7 of the Notice. The claims are summarized as follows:

- Ground 2, item 1: The TC official displayed a lack of competence in relation to a safety assessment performed on an ATR 72 in support of NAPA O-15-0527 in March 2016.
- Ground 2, item 2: The direction of Mr. Sorin Camer, Regional Engineer, Aircraft Certification at TC, about the requirements for a Flight Test Plan in relation to gravel guard testing for NAPA O-16-0260 in April 2016 was a new rule with no foundation.
- Ground 2, item 3: The Ontario Region has a reputation for inconsistent rules in relation to the Flight Test Plan for gravel guard testing in April 2016.
- Ground 2, item 4: TC does not understand the product and its operations in relation to NAPA O-16-0260 in April 2018.
- Ground 2, item 5: Mr. Camer did not have the knowledge or capability of understanding airframe noise generation in relation to the installation of a whip antenna regarding NAPA O-16-0469 in August 2018.
- Ground 2, item 6: Mr. Camer's departure from projects is "a good way to decrease the negative value-added" and there is "much wasted time on both accounts" as of August 2018.
- Ground 2, item 7: There is no consistency among the engineers in the Ontario Regional Aircraft Certification Office, the engineers disagree with national specialists, and the engineers are "all over the map" in their technical decisions as of August 2018.
- Ground 2, item 8: There are prior complaints about the Ontario regional engineers from other delegates as of October 2018.
- Ground 7, item 1: The Ontario regional engineers have little consensus on certification and have no structured procedures to follow as of July 2019.
- Ground 7, item 2: There are service issues in the Ontario Region which resulted in the removal of the Technical Team Lead as of September 2019.

[45] The Tribunal finds that TC internal correspondence related to the incidents when the applicant is alleged to have made unfounded allegations (as identified in the Notice) is relevant to prove or disprove the grounds relied on by the Minister. Therefore, the Tribunal orders the Minister to produce this correspondence.

[46] In category 15, the applicant seeks records related to the transfer of Mr. Alex Pompei, the Technical Team Lead (TTL) for Aircraft Certification, to another position at TC. The applicant claims that the decision to transfer Mr. Pompei amounted to a recognition by TC officials that his criticisms were well founded. The Minister argues that the reasons for Mr. Pompei's transfer bear no relevance to the issues in this review. The Tribunal notes that the issue of the reasons for Mr. Pompei's transfer was identified by the Minister as one of the applicant's unfounded allegations. This issue is identified in ground 7, item 2. The specific instance involved an email written by the applicant on September 30, 2019, in response to TC's letter dated September 5, 2019, about the proposed cancellation of the DAR Certificate. In the email, the applicant wrote as follows with reference to Mr. Pompei:

The service issues within that region [Ontario Region] are wide-spread as you know, so much so that the incumbent TTL [Mr. Pompei] was removed.

[...]

My recommendation is to let the regional office work out these internal problems which they appear to be doing as they are in the process of choosing a new TTL because they have had to remove the incumbent [Mr. Pompei] who was the main cause of these problems.

[47] Given that the Minister identified this issue as one of the unfounded allegations, the Tribunal is persuaded that the records related to the reasons for his transfer are relevant to prove or disprove the applicant's claim that TC transferred Mr. Pompei due to service issues in the Ontario Region.

[48] The Tribunal again finds that the applicant's request is overly broad and includes documents that are not relevant, and it will narrow the category and only order production of the internal TC documents related to the reason for the transfer of Mr. Pompei from Aircraft Certification to elsewhere at TC.

**(c) Records that are not relevant**

[49] The Tribunal is not persuaded that the remaining categories of records are relevant to the issues and, therefore, denies the request for additional disclosure.

[50] In category 1, in addition to the documents referenced in Mr. Waljee's email and already accepted by the Tribunal as relevant, the applicant seeks records of corrective actions taken by TC when he identified inconsistencies and errors in its work. He hypothesizes that TC may have taken corrective actions, and he argues that the records of such corrective actions are required to answer the allegations that he made unfounded allegations. The Minister argues that this request is speculative and unrelated to the issues in the hearing. The Tribunal agrees that this request is speculative because it hypothesizes that some corrective action was taken in response to the concerns he raised. The mere possibility of corrective action in a hypothetical record is irrelevant to the grounds relied on in the Notice.

[51] The requested records in categories 2 and 3 concern the process and decisions related to the renewal of the applicant's EPM. He seeks records related to his requested revisions to his EPM, as well as TC's policies about revisions. In category 4, he is also seeking information about the number of delegates who did have their EPMs revised in the same time period when he was seeking revisions that were denied. The applicant argues that, despite his many efforts, TC failed to approve his requested revisions and that, therefore, his relationship with TC officials was strained.

[52] The Minister acknowledges that the EPM is a relevant document to the Notice of Cancellation but argues that the records sought by the applicant in relation to the renewal of his EPM are not relevant to any of the issues in the hearing. The Tribunal is not persuaded that this history of requested revisions and renewals is relevant in this hearing. The Minister made its decision to cancel the applicant's DAR Certificate based on the EPM that was in effect from 2014 to 2019. Any communications about proposed revisions are not relevant to the question of whether the applicant failed to meet the conditions of the EPM that applied to his relationship with TC. The applicant further argues that he was being treated differently from other delegates with respect to the revision and renewal of his EPM. The Tribunal finds that the issue of whether

or not other delegates were treated differently is not relevant to the issue in this hearing of whether the applicant acted in a way that was not in compliance with his obligations.

[53] The applicant seeks records in categories 6, 7 and 8 that relate to a project with the Dutch Civil Aviation Authority. He argues that the information is required to allow him to defend against the suggestions made by TC in grounds 1 and 3 that he was responsible for delays in this project and that he raised concerns about a failure to follow proper procedures. The Minister challenges the relevance of these records to any of the issues, and further submits that there may be a privilege in relation to some of the communications between TC and the Dutch Civil Aviation Authority.

[54] The Minister's allegations about the Dutch Civil Aviation Authority are found in grounds 1 and 3, and these allegations do not relate to the applicant's concerns about procedure or the degree of his responsibility, if any, for delays. Instead, these allegations identify that the applicant was disrespectful and raised concerns in an inappropriate manner and do not address the substance of his communications. These records sought in categories 6, 7, and 8 about the Dutch project are not relevant to the issues identified in grounds 1 and 3.

[55] Some of the records in category 9 do not exist and have been addressed above. In addition, the applicant seeks correspondence, documents and notes related to the task identified as O-15-0296-Task 02. He claims that these are relevant to establish the veracity of his comment that the TC engineers were "working in the dark." The incident related to this comment was identified by the Minister as part of ground 1 and was used to illustrate that the applicant was disrespectful. The Minister is not claiming that this statement was unfounded, and the requested correspondence and documents are not relevant to the issue of alleged disrespect. The issue is not whether the applicant's remark was true; it is whether the remark was disrespectful and contrary to the conditions of the EPM.

[56] In category 10, the applicant seeks a series of internal documents related to the cancellation of his delegation. He identifies these records as "All TC internal communications and correspondence, documents, notes, etc., related to cancellation of Mr. Carducci's delegation." He argues that these records would show that the TC officials were actively undermining him and not working towards a constructive relationship. The applicant is again speculating about the content of these documents and submits that these records may demonstrate intentional actions on the part of TC to undermine him. The applicant has not sufficiently particularized the requested documents in category 10 to demonstrate their relevance to the allegations and incidents. Moreover, all documents related to the identified incidents that formed the basis for the decision to cancel his delegation will be disclosed, either through the Tribunal's present order or the Minister's disclosure provided in September 2020.

[57] In category 11, the applicant requests all of TC's records related to its management of Mr. Camer, who was the OPI or primary contact at TC for the applicant. He argues that he identified to TC that there were issues with Mr. Camer's performance and that any decisions made by TC about these identified concerns are relevant to the grounds in the Notice. Again, the issue in this review is whether the applicant failed to fulfill the duties as required in the AWM and EPM. The records of how and whether TC responded to concerns about Mr. Camer are not relevant to proving or disproving that the applicant carried out his duties as a delegate.

[58] The records sought by the applicant in category 12 are the number of delegates who received a notice from Mr. Waljee about a six-month timeline for a response. The applicant references an email from Mr. Waljee dated April 5, 2019, in which he responded to the applicant's concern about excessive delays by confirming that TC had a service level that permitted six months for a response. The applicant argues that the requested information in this category is relevant to demonstrate that he was being treated differently from other delegates and that, therefore, his relationship with TC was particularly strained. This request is not relevant to the grounds in the Notice. It is a regular practice that different people may be treated differently for numerous good faith reasons. Nonetheless, the issues in this hearing are not related to the other delegates but whether the applicant ceased to meet the conditions of his DAR Certificate through his conduct.

[59] The applicant identifies in category 13 that he is seeking the delegation of authority for seven identified TC officials. The applicant claims that the extent and nature of each person's delegated authority is relevant to the grounds for cancellation because TC requested that he attend meetings with each of these officials. The Tribunal does not agree that these records are relevant. The allegation is that the applicant failed to attend meetings with representatives of TC. The nature of these representatives' delegation is not relevant to the issue of whether the applicant's failure to attend such meetings violated the conditions of his DAR Certificate.

[60] In category 14, the applicant requests "internal communications between Mr. Pompei and the Director and Associate Directors on disparagement or negative comments about Doug Phillips, Vlad Vujosevic and Mr. Carducci." He argues that these documents are relevant in that they demonstrate the context of his relationship with TC. Again, the Tribunal does not accept the applicant's contention that the nature of the relationship is a matter to be proved or disproved in this hearing. These communications are not relevant despite his assertion that the records would establish that there was a strained relationship. The Minister's disclosure package from September 2020 includes numerous documents and exchanges that could be demonstrative of a difficult and strained relationship, and the applicant can seek to establish this context through his oral testimony as well as through reference to the records in the disclosure package. In addition, the applicant speculates that these records will reveal disparagement from Mr. Pompei that reflected poorly on him with other TC representatives. The applicant has not established that any of the records requested in category 14 relate to any of the specific incidents relied on by the respondent to justify the cancellation of the applicant's DAR Certificate, and therefore, he has not established the relevance of these records. In addition, in this category, the applicant seeks records related to two former employees of TC (Mr. Phillips and Mr. Vujosevic) and these records are clearly irrelevant and immaterial to the issues in this review hearing.

[61] The applicant requests all TC records related to his request to change to a different OPI other than Mr. Camer in category 18 of his disclosure request. The applicant argues that these records are relevant to show the strained nature of his relationship with TC. Again, these records are not relevant to the allegations in the Notice.

[62] In categories 19 and 20, the applicant seeks all TC records related to his relationship with Mr. Napolitano and Ms. Kuyumcu, two OPIs in the Ontario Region with whom the applicant interacted. He states that these records will show that he had a good relationship with his



assigned OPIs other than Mr. Camer. The Tribunal finds that these records are not relevant to the grounds in the Notice.

[63] Finally, in category 21, the applicant requests any and all correspondence regarding his attitude or behaviour after Mr. Pompei's transfer. These records are not sufficiently particularized to demonstrate any relevance to the Notice of Cancellation.

[64] Although the Tribunal has found that most of the requested records are not relevant and therefore, that procedural fairness does not require the Minister to disclose them, it notes that the applicant may still seek and attempt to obtain the records through an ATIP request, as outlined in the Minister's submissions.

[65] In conclusion, the Tribunal finds that some of the requested records are relevant and orders that the Minister produce the records. With respect to all other records requested by the applicant, the Tribunal denies the motion. The respondent advised that a period of two to three months would be required for it to produce the records, if disclosure were ordered by the Tribunal. Although the Tribunal is ordering a subset of the requested disclosure, it recognizes that the volume of records may still be large, and a deadline of 90 days will be set for the Minister to provide the records to the applicant.

#### **IV. RULING**

[66] The applicant's motion to have additional documents disclosed by the respondent is partially granted. The Tribunal orders the Minister of Transport to provide the following records to the applicant within 90 days of the date of this ruling:

- Staff Instructions, Supplementary Staff Instructions and other departmental documents when performing work/tasks that applied to the engineering unit in the Ontario Regional Aircraft Certification Office as of August 31, 2018. (Some of the records described in category 1 of the applicant's disclosure request.)
- All internal TC correspondence related to the incidents when the applicant is alleged to have made unfounded allegations, as identified in grounds 2 and 7 in the appendix to the Notice of Cancellation. (Some of the records described in category 5 of the applicant's disclosure request.)
- All internal TC documents related to the reason for the transfer of Mr. Alex Pompei from Aircraft Certification to elsewhere at TC. (Some of the records described in category 15 of the applicant's disclosure request.)

The Tribunal Registry will reach out to the parties to coordinate the scheduling of a hearing that is expected to occur in the fall.

April 22, 2022

(Original signed)

Jennifer Webster  
Member

Appearances

For the Minister: Eric Villemure

For the Applicant: David Lees