



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Bertlan Inc. v. Canada (Minister of Transport)*, 2023 TATCE 3 (Appeal)

TATC File No.: MQ-0624-37

Sector: Marine

BETWEEN:

Bertlan Inc., Appellant

- and -

Canada (Minister of Transport), Respondent

[Official English translation]

Heard by: Written submissions and videoconference on October 4, 2022

Before: Yves Villemaire, Member (chairing)

Steven Neatt, Member

Gavin Wyllie, Member

Rendered: February 3, 2023

APPEAL DECISION AND REASONS

Held: The appeal is dismissed. The appeal panel upholds the review determination and dismisses the appellant's appeal.

The total amount of \$3,250 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this decision.

I. BACKGROUND

[1] On August 17, 2020, Transport Canada (TC), through Inspector Gilbert Gosselin, issued Bertlan Inc. a Notice of Violation (Notice) for two violations for a penalty totalling \$3,250.

[2] On October 15, 2020, Hubert Langevin, acting on behalf of Bertlan Inc., filed a request for review of the Notice with the Transportation Appeal Tribunal of Canada (Tribunal or TATC).

A. Review determination

[3] The review hearing took place on September 8, 2021, and the Tribunal's decision was rendered on January 17, 2022. This decision confirmed that the Minister of Transport (Minister) had proven that Bertlan Inc. had contravened the *Small Vessel Regulations* and section 87 of the *Canada Shipping Act, 2001 (CSA 2001)*. The Minister's decision to impose a monetary penalty of \$3,250 for both violations was upheld.

[4] On January 25, 2022, Bertlan Inc., the appellant, appealed the member's review determination.

B. Legal framework

[5] Section 14 of the *Transportation Appeal Tribunal of Canada Act* provides that:

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.

[6] Paragraph 106(1)(a) of the *CSA 2001* provides that:

106 (1) The authorized representative of a Canadian vessel shall

(a) ensure that the vessel and its machinery and equipment meet the requirements of the regulations made under this Part;

[7] Section 87 of the *CSA 2001* provides as follows:

87 Every person who is employed on board a Canadian vessel in a position in respect of which a certificate is required under this Part shall hold the certificate and comply with its terms and conditions.

[8] Section 2 of the *CSA 2001* defines "passenger" as follows:

passenger means a person carried on a vessel by the owner or operator, other than

...

(b) a person carried on a vessel that is not a Safety Convention vessel who is

(i) the master, a member of the crew or a person employed or engaged in any capacity on board the vessel on the business of that vessel, or

(ii) a guest on board the vessel, if the vessel is used exclusively for pleasure and the guest is carried on it without remuneration or any object of profit;

[9] Pursuant to paragraph 232.2(3)(b) of the *CSA 2001*, the appeal panel may dismiss the appeal or allow the appeal and, subject to regulations made under paragraph 244(h), substitute its own decision.

C. Grounds of appeal

(1) *Erroneous interpretation of senior director and errors with respect to the sending of the Notice*

[10] The appellant is challenging the member's interpretation that Mr. Langevin is the senior director of Bertlan Inc., the owner of the sailboat *Azul*. In addition, it claims that Mr. Gosselin's letter to Mr. Langevin, a shareholder, was sent to the wrong address. The appellant contends that these errors distorted the analysis and led to an erroneous decision. Paragraph 2 of the review determination reads as follows:

[2] On October 15, 2020, Hubert Langevin, as senior director of Bertlan Inc., filed a request for review of the Notice with the Transportation Appeal Tribunal of Canada.

(2) *Nature of the vessel*

[11] The appellant is challenging the member's finding that it had been operating a commercial vessel, which in this case is a passenger vessel of not more than 15 tonnage that carries not more than 12 passengers and is not a human-powered vessel, and that the *Small Vessel Regulations* apply to Bertlan Inc. Paragraph 6 of the review determination reads as follows:

[6] For both issues, the Minister must first establish that Bertlan Inc. operated a commercial vessel on or about August 23, 2019, as that is a prerequisite for application of the *Small Vessel Regulations* and for requiring a Master Certificate of Competency for the voyage.

II. ANALYSIS

A. Standard of review

[12] In a recent appeal decision¹ of the TATC, the Tribunal reiterated how standards of review are applied in appeals to the Tribunal:

The appropriate standard of review for an appeal panel of the Tribunal was established by the Federal Court in *Billings Family Enterprises Ltd. v. Canada (Transport)*, 2008 FC 17, and more recently in *Canada (Attorney General) v. Friesen*, 2017 FC 567. **The standard of reasonableness applies to findings of credibility, fact, and mixed fact and law, and an appeal panel must give considerable deference to the review member on such questions. On questions of law, the standard is one of correctness, and an appeal panel is entitled to take its own view.** [Emphasis added.]

[13] In *Canada v. Vavilov*,² the Supreme Court of Canada established that the reasonableness of a decision "is concerned mostly with the existence of justification, transparency and

¹ *Académie de Pilotage Internationale Inc. v. Canada (Minister of Transport)*, 2021 TATCE 7.

² *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paragraphs 85–86.

intelligibility within the decision-making process,” as well as “with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[14] When the standard of reasonableness applies, the appeal panel must, for each ground of appeal and each error alleged by the appellant, decide whether the decision as a whole was reasonable, whether the member’s decision and its rationale have the qualities of reasonableness in light of the evidence before the member.

[15] The respondent argued that, given the grounds of appeal raised, the issues to be resolved by the appeal panel were questions of fact only and that, as a result, the reasonableness standard applied. The appellant did not raise the issue of standard of review.

[16] The appeal panel concluded that the first ground of appeal involved an error of fact, and the second ground of appeal an error of mixed law and fact. Since both questions of fact and those of fact and law should be reviewed under a reasonableness standard, the panel will adopt this standard for both grounds of appeal.

B. First ground of appeal: Erroneous interpretation of senior director and errors with respect to the sending of the Notice

[17] The appellant contends that the review member erred in interpreting that Mr. Langevin is the senior director of Bertlan Inc., the owner of the sailboat *Azul*. It alleges that this error distorted the analysis and led to an erroneous decision.

[18] The appellant maintains, firstly, that the Notice was addressed to Hubert Langevin, who is only a shareholder of Bertlan Inc. In addition, the Notice was sent late and to the wrong address. These errors, according to the appellant, render the Notice invalid.

[19] As the respondent pointed out, even if the Notice was sent to the wrong address, the appellant did in fact receive it, since a request for review was filed with the Tribunal registry following receipt of the Notice.

[20] The appeal panel finds that, even if there was an error concerning the address of the recipient of the Notice, this error was not a serious one, and it rejects this ground of appeal. The Federal Court³ has established that administrative decisions need not be perfect and that an imperfect decision with immaterial errors can still be reasonable, if other parts of a decision maker’s analysis are sound and the errors are not determinative of the final outcome.

[21] Although Mr. Langevin was not a senior director, the appeal panel considers that it was reasonable for the review member to conclude that Mr. Langevin had acted as the appellant’s representative, since it was he who filed the request for review and it was he who represented Bertlan Inc. at the hearing.

³ *Rinchen v. Canada (Citizenship and Immigration)*, 2022 FC 437, paragraph 21.

[22] The appeal panel notes that the Notice was sent within the two-year timeline stipulated in section 241 of the *CSA 2001* (below). In view of this, the panel considers that the review member did not err in admitting the Notice into the evidentiary record.

241 No notice of violation may be issued more than two years after the day on which the Minister becomes aware of the contravention.

[23] The panel determines that the member did not commit a serious error concerning the senior director and the admission of the Notice as evidence. Consequently, the panel dismisses the first ground of appeal.

C. Second ground of appeal: Nature of the vessel

[24] The appellant is challenging the review member's finding that it had been operating a commercial vessel and that the *Small Vessel Regulations* therefore apply. The appellant argues that the Minister must prove that Bertlan Inc. had been operating a commercial vessel, since the review member made this a *sine qua non* condition for the *Small Vessel Regulations* to apply. It claims that the Minister failed to prove that the sailboat *Azul* was a commercial vessel.

[25] In its written submissions, the respondent concluded that, since there was a passenger on board, the sailboat *Azul* should be considered a commercial vessel.

[26] At the appeal hearing, Mr. Langevin argued that the sailboat *Azul* was a pleasure craft according to the *Small Commercial Vessel Safety Guide*, TP 14070 (Guide). He claimed that, during the voyage in question, the sailboat had no master or crew on board, only a renter and a guest. He maintained that Mr. Thibault was in charge of the vessel.

[27] The appeal panel examined Mr. Langevin's arguments concerning his interpretation of the Guide in relation to the rental and operation of vessels. The panel concluded that the review member had not erred in applying the *Small Vessel Regulations*, which take precedence over the Guide.

Master, passenger or guest?

[28] The appeal panel must determine whether the review member erred in concluding that Bertlan Inc. had been operating a commercial vessel and whether the *Small Vessel Regulations* apply.

[29] To that end, the appeal panel must determine whether it was reasonable for the review member to conclude that, on the voyage in question, Mr. Langevin's status was that of master rather than guest, and that Mr. Thibault's status was that of passenger.

[30] Judith Langevin, Bertlan Inc.'s director, made the point that the sailboat *Azul* was occasionally rented without a master or crew.

[31] The appeal panel notes that this use must comply with the description of a pleasure craft (Guide, page 10, Table 1-1, b)). The panel considered the review member's analysis of Mr. Langevin's actions during the voyage in question in order to establish the nature of the

vessel according to the status he assigned to Mr. Langevin. Paragraph 44 of the review determination reads in part as follows:

[44] ... Mr. Langevin stated that he operated the vessel. He was therefore engaged on board in duties on the business of the vessel, as stipulated in subparagraph 2(b)(i) of the *CSA 2001*. In my opinion, he held the position of master.

[32] During the appeal, Mr. Langevin mentioned a discussion he had had with Mr. Thibault prior to the voyage in question. The latter had notified him of his experience in maneuvering a sailboat. However, he mentioned that there had been no discussion between him and Mr. Thibault concerning their respective roles prior to the departure of this voyage.

[33] Ms. Langevin also stated that Mr. Langevin was expecting a guest of Mr. Thibault's to join them on the day of the voyage in question.

[34] Mr. Langevin mentioned that maneuvering the vessel requires the presence of two people, for example, when the sails are hoisted. He added that it was practically impossible to carry out these maneuvers alone. He explained that Mr. Thibault, the renter, required his assistance.

[35] Mr. Langevin further noted that he took the helm to exit the harbour. He handed the helm to Mr. Thibault only when they were in open water. He took it back when they returned to the harbour.

[36] Ms. Langevin explained that some renters did indeed need Mr. Langevin's help in exiting the harbour. He would steer the boat to ensure the safety of the vessel during that piloting phase.

[37] Mr. Langevin stated that he was merely acting as a guest when he took the helm during the voyage in question.

[38] The appeal panel considered the evidence and the parties' arguments to assess whether the review member had erred in concluding that Mr. Langevin was the master rather than a guest, and that Mr. Thibault's status was that of a passenger. The appeal panel found that the review member had not erred because it was reasonable for him to determine that Mr. Langevin was acting as master as he was maneuvering the vessel into and out of port; he had command of the boat at those times; he remained on board for the remainder of the voyage, unlike a marine pilot who leaves a vessel when it is out of the pilotage area. The appeal panel concluded that it was reasonable for the review member to conclude that Mr. Langevin held the position of master, having performed duties on board on the business of the vessel, as set out in the definition of "passenger" in subparagraph 2(b)(i) of the *CSA 2001*. For these reasons, the appeal panel also considers that the decision of the review member to conclude that Mr. Langevin was acting as an employee of the company was reasonable.

[39] It was reasonable to determine that Mr. Thibault was a passenger. First, he was not a person employed or engaged in any capacity on board the vessel on the business of that vessel. In addition, he had paid to be on board. The appeal panel considers that the member did not err in determining that Mr. Thibault had been a passenger on the voyage in question, since it was established that he had paid the sum of \$150 as stipulated in the rental contract. Since he was not

being transported free of charge, he was not excluded from the definition of “passenger” in subparagraph 2(b)(ii) of *CSA 2001*.

[40] Accordingly, it was reasonable to determine that the *Azul* should be considered a commercial vessel and that it must comply with the *Small Vessel Regulations*.

[41] At the review hearing, Mr. Langevin acknowledged that Inspector Pelletier had met with him on several occasions prior to the voyage in question, which took place on or about August 23, 2019, and that he was familiar with the equipment requirements in order for the *Azul* to comply with the law.

[42] At the appeal hearing, Mr. Langevin explained that he had not intended to circumvent the law, but to comply with it. However, the introduction to the Guide clearly explains that, in case of doubt about the relevance of an item of information and how it applies to a vessel, the reader should contact a local TC centre.

[43] The appeal panel determines that the review member did not err in concluding that Mr. Langevin had failed to comply with Inspector Pelletier’s interpretation of the Guide during their many discussions prior to the voyage in question.

[44] Having determined that Mr. Langevin was acting as master and that Mr. Thibault was a passenger, the appeal panel considers that the review member’s decision determining that the sailboat *Azul* was a commercial vessel during the voyage in question was reasonable.

[45] Having accepted that the sailboat *Azul* was a commercial vessel, it is clear that it had to meet the requirements of section 87 and paragraph 106(1)(a) of *CSA 2001*, from which the *Small Vessel Regulations* derive.

[46] The panel determines that the member did not commit an error of mixed fact and law in concluding that Bertlan Inc. had been operating a commercial vessel and that the *Small Vessel Regulations* applied. The panel rejects the second ground of appeal.

III. DECISION

[47] The appeal is dismissed. The appeal panel upholds the review determination and dismisses the appellant’s appeal.

[48] The total amount of \$3,250 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this decision.

February 3, 2023

(Original signed)

Reasons for the appeal decision: Yves Villemaire, Member (chairing)
Concurred by: Steven Neatt, Member
Gavin Wyllie, Member

Representations

For the Minister: Martin Forget
For the Appellant: Hubert Langevin and Judith Langevin