



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Craig Karpilow v. Canada (Minister of Transport)*, 2023 TATCE 5 (Review)

TATC File No.: RA-029-22

Sector: Aviation

BETWEEN:

Craig Karpilow, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard by: Videoconference on October 3, 2022

Before: Dr. Linda Garand, Member

Rendered: February 21, 2023

REVIEW DETERMINATION AND REASONS

Held: The Minister of Transport has proven, on a balance of probabilities, that it was in the public interest to cancel the applicant's Canadian aviation document as per paragraph 7.1(1)(c) of the *Aeronautics Act*.

I. BACKGROUND

[1] On April 8, 2022, Transport Canada (TC) advised Dr. Craig Karpilow, the applicant, on behalf of the Minister of Transport (Minister), that pursuant to paragraph 7.1(1)(c) of the *Aeronautics Act*, it was in the public interest to cancel his appointment as a civil aviation medical examiner (CAME). The letter indicated:

I must regrettably conclude that it is no longer in the public interest to continue your appointment as a Civil Aviation Medical Examiner (CAME) for: repeated submission of incomplete and/or incorrectly completed Medical Examination Reports which impede the safe, effective, and/or efficient provision of medical certification; and issuance of letters to applicants regarding their medical certification status for which you do not have authority. Unfortunately, Transport Canada's previous attempts at remediation have proven unsuccessful.

[2] On May 2, 2022, Dr. Karpilow requested that the Transportation Appeal Tribunal of Canada (Tribunal) review the Minister's decision.

II. PRELIMINARY ISSUES

[3] Neither party presented any preliminary issues. I initiated the discussion regarding the disclosure of medical information.

[4] It was established that medical information of patients would be presented during the hearing. However, neither of the parties presented the issue of confidentiality for such information.

[5] It was explained to both parties that this is not a hearing pertaining to a medical certificate but rather a hearing about a licensing issue regarding a CAME. Therefore, this hearing is presumed to be public. Both parties were given the opportunity to comment on the protection of medical information and agreed on protecting the data.

[6] Section 15(4)(b) of the *Transportation Appeal Tribunal of Canada Act* (TATC Act) provides that the Tribunal may hold all or part of the hearing in private if it is of the opinion that:

(b) medical information about a person may be disclosed and the desirability of ensuring that, in the interests of that person, the information is not publicly disclosed outweighs the desirability of adhering to the principle that hearings be open to the public; ...

[7] As such, because of section 15(4)(b) of the TATC Act and with the agreement of both parties, the Tribunal ruled that the decision will be published but all written medical information about a person from the exhibits, as well as verbal discussion presented during the hearing, will be kept confidential.

III. ANALYSIS

A. Issue

[8] The issue to be determined is whether it was in the public interest to cancel Dr. Craig Karpilow's Canadian aviation document (CAD).

B. Legal framework

[9] TC cancelled Dr. Craig Karpilow’s appointment as a CAME on April 8, 2022, pursuant to paragraph 7.1(1)(c) of the *Aeronautics Act* which provides that the Minister can issue a decision to cancel a CAD on the grounds that “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”.

[10] Section 424.17 under Standard 424 – Medical Requirements of the *Canadian Aviation Regulations* (CARs) provides the responsibilities of a CAME:

- (1) When conducting a medical examination of an applicant for the issuance or renewal of a medical certificate, the CAME shall:
 - (a) examine the applicant in accordance with:
 - (i) medical practice recognized by the medical profession, and
 - (ii) the personnel licensing standards;
 - (b) record in a medical examination report:
 - (i) the CAME’s clinical findings, and
 - (ii) where the applicant meets the requirements of any category of medical certificate, as set out in this section, that category; and
 - (c) submit to the Minister:
 - (i) the medical examination report, and
 - (ii) any other medical report required for the purpose of establishing medical fitness to hold a permit, licence or rating.
- (2) Where an applicant meets the medical standards for renewal of his or her medical certificate, the CAME shall sign, date and stamp the medical certificate with his or her official stamp, if any, indicating that the applicant is “fit”.
- (3) The medical examination shall be sufficiently thorough so as to determine whether the applicant meets the requirements in respect of the category of medical certificate that is applied for or in respect of which a validation is sought.
 - (a) The purpose of the medical examination is to determine whether an applicant meets the standards that apply in respect of the issuance of the Medical Certificate that is needed to issue a particular permit, licence or rating. The standards that are applicable in respect of the issuance and the renewal of a permit, licence or rating are basically the same.
 - (b) A Civil Aviation Medical Examiner shall be familiar with aeromedical assessment, and shall possess some practical knowledge of flight duties and the flight environment.
 - (c) It shall be the responsibility of the Civil Aviation Medical Examiner to examine the Applicant carefully.
 - (d) Where the Civil Aviation Medical Examiner cannot reach a conclusion concerning the fitness of an applicant he shall omit the allocation of a category and refer the Medical Examination Report to the Civil Aviation Medical Staff for assessment or further advice.
 - (e) The examiners report is made on “Civil Aviation Medical Examination Report” Transport Canada Form 26-0010 (Appendix I). The form requires the signature of both the applicant and the Civil Aviation Medical Examiner. Medical Examiners in other countries may use the above form or an equivalent form of that country.

(f) Medical examination reports and pertinent specialist or laboratory reports shall be forwarded to the appropriate Regional Office for the attention of the Civil Aviation Medicine Division Medical Staff.

(4) Physical and Mental Requirements for Medical Categories

An applicant shall be granted the highest assessment possible on the basis of the finding recorded during the medical examination. An applicant desiring a medical category higher than that necessary for the type of permit, licence or rating requested shall so inform the Civil Aviation Medical Examiner. Where specialist examinations or laboratory tests are required to determine fitness for a higher assessment, these may be arranged by the Civil Aviation Medical Examiner, with the concurrence of the applicant.

The following indicates the standard an applicant must attain for the issuance of a Medical Certificate for each medical category: Physical and mental requirement.

C. Facts

[11] To evaluate the severity of the repercussions on aviation safety that could be caused by the non-compliance of a medical examination report (MER), it is important to note certain facts presented by the Director of Civil Aviation Medicine (CAM) at TC during the hearing.

(1) *Unprecedented working situation at TC CAM*

[12] The Director of CAM, Dr. Tyler Brooks, testified that the directorate of CAM is a very small unit composed of about 25 people. CAM is the first point of contact for the training of pilots and air traffic controllers. CAM is a high-volume department, and its service delivery timeframes are crucial to maintain an essential level of safety in the aviation industry.

[13] Historically, all MERs were reviewed by CAM staff. Because this working standard did not allow to achieve the required service delivery timeframes, a new system was introduced. In lieu of reviewing all incoming MERs, the incoming files were triaged according to their safety risk level. All *ab initio* (new) applicant MERs, as well as some more problematic MERs related to renewals, were all still reviewed by CAM staff. However, medical certificates were renewed by the CAME with no identification of medical problems are now mostly stamped and not reviewed.

[14] Dr. Brooks explained that this new system does not prevent CAMEs from writing inaccurate information, incorrectly applying CARs requirements, or inappropriately renewing a medical document. To deliver service in a timely manner while minimizing and maintaining an acceptable level of aviation safety, CAM relies a lot more on CAMEs providing high-quality MERs. Dr. Brooks testified that once trained, a CAME is expected to perform according to the medical standards.

[15] Even though CAM worked all through the COVID-19 pandemic, it had to deal with staff attrition. To maintain the service delivery timeframes, they introduced temporary measures such as extension of validity for medical certificates. They also rapidly introduced a transition from paper MERs to an electronic system, which required a rapid adaptation from CAM staff as well as from CAMEs.

[16] With the aviation industry rebounding, CAM's capability is stretched to the limit, and it is difficult to maintain service delivery timeframes and thus difficult to maintain an acceptable level of aviation safety. Dr. Brooks stated that at this point, any low-quality submissions received have a disproportionate impact on the program in terms of creating an administrative burden for the CAM staff. Dr. Brooks stated that his department simply doesn't have the resources to extensively remediate CAMEs.

(2) *Dr. Karpilow's experience and training*

[17] The following information was presented by the Minister and confirmed by Dr. Karpilow during the hearing.

[18] Dr. Karpilow has been a CAME since June 2010.

[19] The Minister provided Dr. Karpilow with a letter of appointment on June 21, 2010 (Exhibit 2C), which provided the reasons for which a CAME appointment can be cancelled:

... your appointment is at the pleasure of the Minister of Transport and may be cancelled for one or more of the following reasons:

- (a) Frequent or continually low quality professional performance.
- (b) Failure to provide reasonable availability of service.
- (c) Unethical conduct.
- (d) Loss or suspension of medical licensure.
- (e) Prolonged inability to provide service due to ill health or disability.
- (f) Change of geographic location.
- (g) Voluntary relinquishment of appointment.
- (h) Lack of requirement for aviation medical examination services.
- (i) Failure to attend a CAME training course within the required interval.
- (j) Failure to provide adequate facilities for medical examination and testing

[20] Dr. Karpilow attended a CAME seminar soon after his appointment in 2011. He also attended CAME seminars in November 2012, November 2014 and September 2017. He stated that he has done over 900 MERs, a number that was not challenged by the Minister.

D. Was it in the public interest to cancel Dr. Karpilow's CAD?

[21] The Tribunal has examined the arguments and the evidence presented by both parties to determine whether the Minister has proven that it was in the public interest to cancel the applicant's CAD because he repeatedly submitted incomplete and/or incorrectly completed MERs impeding the safe, effective, and/or efficient provision of medical certification. Dr. Karpilow also issued letters to applicants regarding their medical certification status for which he did not have authority to issue.

[22] To answer the question at issue, the Tribunal will also rely on the following decisions from the Federal Court.

[23] In this manner, the Federal Court cases of *Bancarz v. Canada (Transport)*, 2007 FC 451 [*Bancarz*], and *Canada (Attorney General) v. 2431-9154 Québec Inc.*, 2008 FC 976 [2431-9154 *Québec Inc.*], were considered in order to define “public interest.” Although the context in these cases is different from the case at hand, these principles used to assess whether it was in public interest for TC to cancel the applicant’s CAD are applicable.

[24] In 2431-9154 *Québec Inc.*,¹ the Federal Court stated that:

The public interest is engaged when past non-compliance is serious and repeated enough to conclude that there is a risk of further offences and that the operator must therefore stop using the certificate.

The onus is on the Minister to provide such justification.

[25] In *Bancarz*,² the Federal Court stated that “there must be either numerous incidents or major incidents with clear evidence of wrongdoing to justify suspension or cancellation.”

(1) Repeated submission of incomplete and/or incorrectly completed MERs

[26] The Minister presented many cases of incomplete and/or incorrectly completed submissions done during the last five-year period. Dr. Brooks testified that these incomplete submissions impeded the safe, effective and efficient provision of medical certification. A sample of cases were presented during the Minister’s presentation.

[27] A screenshot of observations from 2022-03-03 to 2022-06-12 from Dr. Karpilow’s profile on the CAM electronic platform, admitted as Exhibit 3, demonstrated multiple incidences of incomplete MERs. There were many errors regarding discrepancies between the paper MERs and the electronic MERs (eMERs), many cases of ocular muscle balance errors and continuing usage of notes stating that the student pilot “passed” his medical examination. This had already been addressed in June 2020 (Exhibit 6), as Dr. Edward Bekeris, Acting Regional Aviation Medical Officer (RAMO) at TC, stated:

Further comment on this practice of providing applicants with such notes, these are ab initio applicants for a Medical Category. Assessment of the Medical Category can only be completed at the Regional offices of Transport Canada.

[28] The following are more examples of cases from Exhibit 3 demonstrating issues with MERs:

- a. An *ab initio* applicant with recent hospitalization for depression for which Dr. Karpilow, the CAME did not recommend further investigation, contrary to what the Tribunal found was recommended in CARs Standard 424.17(4), Medical Requirements Table, Medical Category 1, paragraph 1.3(d).
- b. An *ab initio* applicant with a history of driving under the influence (DUI) for which Dr. Karpilow, the CAME, did not recommend further investigation to rule the possibility of addiction. CAM mentioned, “did not recommend further exam/inv.” This tribunal, referring to CARs Standard 424.17(4), Medical Requirements Table, Medical Category 1,

¹ 2431-9154 *Québec Inc.* at paragraphs 73-74.

² *Bancarz* at paragraph 49.

paragraph 1.3(b), was led to understand that the CAME should have evaluated the possibility of alcohol addiction, which represents an important risk to rule out.

[29] Amongst the complete cases presented, the Tribunal notes some lack of medical knowledge with understanding the test related to ocular muscle balance. A letter dated September 20, 2017, from Dr. Bekeris to Dr. Karpilow found at Exhibit 4, stated that “Ortho ‘1/2’” was confusing. The letter provided explanation on how to describe the ocular muscle balance results.

[30] However, a second letter, dated December 19, 2017, found at Exhibit 5, contains the same confusing ocular muscle balance result but for another pilot. Dr. Karpilow’s explanation of “Ortho ‘1/2’” meaning that it applied to eye #1 and #2 is not recognized by standard evaluation. The explanation on how to record ocular muscle balance had already been provided in the September 2017 letter and was still not followed.

[31] The screenshot in Exhibit 3, presented by the Minister, showed an MER dated March 2022 with more ocular muscle balance discrepancies accompanied with more medical confusion regarding hyperphoria, leading to understand that this concept was still not understood five years after having been told how to present the ocular muscle balance result.

[32] These incomplete and/or incorrectly completed MERs which do not satisfy paragraph 424.17(3)(a) of the CARs, thus impeding the safe, effective, and/or efficient provision of medical certification.

[33] It was established that a letter from the Director of CAM was sent to all CAMEs on March 17, 2020, explaining the Minister’s decision to embargo MERs, except for exceptional circumstances. A letter from Dr. Bekeris to Dr. Karpilow dated June 11, 2020, found at Exhibit 6, indicated that an MER had been done on March 31, 2020, which was after the March 17, 2020, Minister embargo on MERs. This is another example of Dr. Karpilow not following the rules established by authorities, in this case a direct decision from the Minister to cease all MERs after March 17, 2020, in response to the COVID-19 pandemic. This represents another decision made by Dr. Karpilow without having the proper authority.

[34] Two MERs presented, contained in Exhibits 6 and 7, demonstrated that Dr. Karpilow found pilots medically fit even though the visual acuity results did not satisfy CARs Standard 424.17(4), Medical Requirements Table, Medical Category 1, paragraph 1.35. The medical certificate for the first pilot was renewed, and the certificate for the second pilot, which needed to be reviewed by CAM since it was for an *ab initio* applicant, was also renewed even though both these two pilots did not satisfy the visual requirement. Furthermore, in the *ab initio* applicant’s case, Dr. Karpilow made a note stating “...passed his MOT [Minister of Transport] exam today,” when in fact only CAM was authorized to decide on the fitness. Dr. Karpilow testified that he renewed the medical certificate because he had sent the pilots to an ophthalmologist for further testing. However, he did not know the results of the consultation at the time he approved the medical certificate. Thus, he approved medical certificates without ensuring the visual fitness.

[35] Dr. Karpilow sent to CAM two MERs with pathologies for which adequate medical information was not produced to ascertain the medical fitness of the individuals:

1. The MER found at Exhibit 8 indicated a diagnosis of coronary artery disease with a history of coronary stenting and a valve replacement in July 2017. There were no additional comments or testing provided, there was no recommendation for further cardiac examination, and the medical certificate was renewed. A letter dated September 10, 2020, from Dr. Craig Winsor, Aviation Medical Officer at TC, to Dr. Karpilow stated, “Despite this significant medical condition, with a potential significant impact on flight safety, you renewed this applicant’s MC [medical certificate] rather than deferring the file for review....” Dr. Karpilow testified that CAM should have relied on the 2017 cardiologist’s assessment. This assessment was not provided with the initial MER nor was it produced as an exhibit during the hearing. The Minister argued that Dr. Karpilow had not provided any evidence of updated cardiac fitness testing at the time the MER was done and, as such, did not follow the requirement stipulated in CARs Standard 424.17(4), Medical Requirements Table, Medical Category 1, paragraph 1.6.
2. Another MER dated June 23, 2020, found at Exhibit 10, indicated a diagnosis of kidney stone with mention of “Mar 2019 Passed OK.” No other information or further testing was provided, and the MER was sent to CAM. It was not signed or stamped and contained no information regarding the renewal of a medical certificate or further examination. A letter dated June 15, 2021, also found at Exhibit 10, from Dr. Winsor stated, “Despite the significant potentially disabling medical condition, no additional medical reporting was provided.” Dr. Karpilow sent a letter dated June 22, 2021 (Exhibit 12), to Dr. Winsor indicating that the MER was sent in error and should have been put on hold in his office. During the MER physical examination, Dr. Karpilow had found a new cardiac arrhythmia and had requested a cardiologist assessment. Dr. Karpilow testified that he blamed his administrative support for this mistake. Regarding the kidney stone he states: “In regards to his stated kidney stone that he had 15 months prior to his examination, he indicated that he had passed the kidney stone and had no further symptomatology for 15 months. I took his word for this.” This is contrary to the known CAM recommendation mentioned by Dr. Winsor in the June 15, 2021, letter.
3. Dr. Karpilow did not present adequate medical testing to evaluate the kidney stone status as stated in CARs Standard 424.17(4), Medical Requirements Table, Medical Category 1, paragraph 1.22 “calculus obstruction, shall be assessed as unfit unless accredited medical conclusion considers that the condition is not liable to cause incapacitation in the air”.

[36] There are a few MERs that were presented electronically and contained discrepancies which were not compatible with the comprehension of the testing and/or CARs standards.

[37] Exhibit 9 demonstrates one of the many important discrepancies found between the paper MER and the eMER. The information on vision does not always make sense and is sometimes conflicting: “[t]he eMER indicates Hyperphoria (diopters not specified) and the paper PDF MER states Orthophoria.” The drug history does not correlate: “[t]he eMER states no drug use while the paper PDF MER states ‘yes’ for ‘any drugs used for non-medical reasons[’] and adds ‘Quit 3 months ago (vaping).’”

[38] As Dr. Brooks explained during his testimony, this type of incomplete MER creates an administrative burden on the system and delays decisions. Ultimately, these discrepancies could easily lead to a wrong decision of fitness and possibly create an aviation safety risk.

[39] Dr. Karpilow stated that the information on the eMER was not the same as on his paper MER because his assistant did not input the information correctly on the electronic system. Dr. Karpilow never acknowledged that as a CAME he ultimately holds the responsibility for transmitting to the minister accurate information on medical examination as stated in CARs 424.17(1)(c). This paragraph requires that the CAME submit the MER to Minister.

[40] The fact that Dr. Karpilow decided to delegate the task of electronic transfer to a member of his staff, does not invalidate his responsibility of overlooking for the exactitude of the task. As Dr. Karpilow repeatedly disregarded that responsibility, he fails to meet the expected medical professional standards of a CAME.

[41] There is evidence that Dr. Karpilow answered some of the letters from CAM. He presented two of those letters, Exhibits 12 and 13, related to cases discussed. Dr. Karpilow demonstrated some cooperation. The Minister argued there was no evidence of other letters having been received. These letters show that Dr. Karpilow demonstrated a misunderstanding or possible disregard of basic aviation medicine requirements under the CARs. Dr. Karpilow did not explain during his testimony the reason for not following the established CARs standards. He rather emphasized that he “put nobody at risk” and that “none of the ones that [he] examined were put at risk.” He presented that with more support, more emails and more phone calls from CAM, his MERs would have been satisfactory. He did not see the reason to declare a pilot unfit if he had already made a consultation referral to a specialist (such as an ophthalmologist or a cardiologist), even if he doesn’t have the result of the consultation.

[42] Based on the evidence presented, the Minister has proven on a balance of probabilities that Dr. Karpilow has submitted multiple MERs that were incomplete and/or incorrectly completed over a period of a few years. Even though the responsibilities of CAMEs were repeatedly reinforced by seminars or letters from CAM, Dr. Karpilow continued incorrectly applying the rules of aviation medicine as stipulated in the CARs, specifically sections 404.17 and 424.17. This non-compliance by Dr. Karpilow impedes the safe, effective, and/or efficient provision of medical certification as he fails to satisfy his responsibilities as a CAME as per section 424.17 of CARs Standard 424 – Medical Requirements.

[43] These repeated incomplete or/and inaccurate MERs present a risk to aviation safety because it can potentially lead to issuing a medical certificate that shouldn’t be issued. This would by extension be a risk to public safety.

(2) *Issuance of letters to applicants regarding their medical certification status for which the applicant did not have authority to issue*

[44] The Minister argued that it was in the public interest to cancel Dr. Karpilow’s CAD because of unauthorized usage of the official TC stamp and unauthorized issuance of medical certifications.

(a) *Unauthorized usage of the official TC CAME stamp*

[45] The official TC CAME stamp is issued to each CAME upon their appointment. The stamp has the name and the number of the specific CAME.

[46] The use of the TC CAME stamp is described in subsection 404.04(1.1) and section 404.18 of the CARs:

404.04 (1.1) A medical certificate is also renewed if it is signed, dated and stamped in accordance with paragraph 404.18(a).

[...]

404.18 When the holder of a medical certificate undergoes a medical examination by a physician referred to in paragraph 404.16(a) or (b) for the purpose of renewing his or her certificate or obtaining permission to continue to exercise the privileges of his or her permit, licence or rating, the physician shall

(a) sign and date the medical certificate and stamp it with his or her official stamp indicating that the holder is “fit” and return the medical certificate to the holder; or

(b) advise the holder that he or she is “unfit” and return the medical certificate to the holder.

[47] The Minister could not identify any reference of legal restriction for the use of the stamp. However, The Minister testified that the common usage is known and respected by all CAMEs, except Dr. Karpilow. Dr. Karpilow stated that the usage of the stamp, other than stated above, was never presented during the CAM seminars he attended.

[48] A letter dated June 15, 2021, from Dr. Winsor to Dr. Karpilow, found at Exhibit 9, states, “This stamp is reserved for the completion of Transport Canada Medical Certificates and Medical Report forms.” Dr. Karpilow testified that flying schools were asking for something with an “official look” in order for the applicant to pursue flight training. Further letters from Dr. Winsor indicated to restrict the use of stamps to CAM’s recommendation without exception. Dr. Karpilow ignored the repeated requests to stop using his stamp inappropriately and continued with the unauthorized use of his stamp on a prescription pad.

[49] A letter dated January 6, 2022, from Dr. Winsor to Dr. Karpilow (Exhibit 11) reinforced how the stamp should be used and stated, “The Transport Canada CAME stamp is reserved for the completion of Transport Canada Medical Certificates and Medical Report forms.” Dr. Karpilow sent a letter to Dr. Brooks on March 14, 2022 (Exhibit 18), which stated that he “will only provide or verbalize to any candidate a document with the CAME stamp as per CAME guidelines” and that he has “discontinued using the stamp other than in the ‘blue book.’”

[50] The Minister argued that the stamp was “used in a misleading role” and “may be misinterpreted by an applicant that his/her certification is approved at this stage.” The Minister argued that this could easily lead to flying in circumstances not approved medically and increases the risk to public safety. The Minister stated that Dr. Karpilow did not have the authority to use the stamp in this manner, neither did he have the authority to issue medical fitness letters, as this is CAM’s authority.

(b) Unauthorized issuance of medical certification status

[51] As mentioned in the letter dated June 11, 2020, from Dr. Bekeris to Dr. Karpilow (Exhibit 6) and discussed by Dr. Bekeris during the hearing, Dr. Karpilow provided an *ab initio* applicant with a note on his prescription pad (as seen at the bottom of Exhibit 6) stating “...passed his MOT exam today.” Dr. Bekeris also indicated in the letter that “this practice of

providing applicants with such notes, these are *ab initio* applicants [...]. Assessments of the Medical Category can only be completed at the Regional offices of Transport Canada. As such, the note is not correct, and misleading. The only indication that an *ab initio* applicant has ‘passed’ is issue of a Medical Certificate by Transport Canada.”

[52] The letter from Dr. Winsor dated June 15, 2021, to Dr. Karpilow (Exhibit 9) indicating to stop the usage of such notes as it “may be misinterpreted by an applicant that his/her certification is approved.” Dr. Karpilow continued to issue stamped notes stating “passed his aviation medical exam today” to *ab initio* applicants. The letter dated January 6, 2022, from Dr. Winsor to Dr. Karpilow (Exhibit 11) stated: “You once again provided the applicant with a medical note on your office stationery stating ‘passed his aviation medical exam today.’”

[53] Through Exhibit 6, Exhibit 9, Exhibit 11 and Exhibit 3, the Minister presented that after repeated attempts at remediation, Dr. Karpilow continued for years the repeated inappropriate use of the stamps and issue of unauthorized certification, even though he received multiple letters from CAM stating the inappropriateness.

[54] As early as September 10, 2020, a letter was sent by Dr. Winsor to Dr. Karpilow, seen in Exhibit 8, which contained the following, “It is expected that you will take appropriate measures to address these performance issues. If you are unable to fulfil the conditions of your appointment, your CAME designation will be considered.” Such warning was repeated on letters from CAM dated June 15, 2021 (Exhibit 9), and January 6, 2022 (Exhibit 11). Those last two letters also indicated that this matter was reviewed by Dr. Brooks who requested to send Dr. Karpilow a formal notice.

[55] Dr. Karpilow testified that he has been a CAME since 2010 and has done over 900 MERs within a 12-year period. Dr. Brooks stated that Dr. Karpilow had attended regular CAM seminars. Thus, Dr. Karpilow should know by now the application of the *Aeronautics Act* and the medical requirements of the CARs. Yet, he continued to present non-compliant MERs with numerous incidents. Regularly, his MER fitness evaluations involved major medical incidents which did not follow the appropriate medical requirements established in the CARs.

[56] The Minister argued that the past non-compliances were serious and recurrent, even though extensive administrative and technical support had been given. Dr. Brooks testified that TC relied on experienced CAMEs to be more independent as they did not have the capacity to offer more support. Dr. Karpilow presented that he would have required even further support from CAM.

[57] Dr. Brooks testified that TC aviation has over 600 CAMEs, however low-quality MERs are “actually remarkably rare” with the same technical support. Dr. Brooks commented that “any low-quality submissions that we receive have a disproportionate impact on our program in terms of creating administrative burden.” He continued explaining that TC CAM is “critical to ensuring the preservation of the central aviation services” and that for this reason, the process for managing renewal certificates “relies on our CAMEs providing high-quality reports.”

[58] The Tribunal found that even though he was experienced, Dr. Karpilow required constant and repeated CAM medical technical support and still did not show improvement in the medical

quality of the MERs he submitted from 2017 to 2022 (see Exhibits 4 to 11). Dr. Karpilow was repeatedly reminded from 2020 to 2022 (see Exhibits 8 to 11) of the following: “You are advised that you are required to meet the expected medical professional standards and appropriately exercise CAME discretion...” Dr. Karpilow never made any adjustments to his approach to completing medical examinations, contrary to paragraphs 424.17(1)(a) and 424.17(3)(a) of the CARs.

[59] Dr. Karpilow’s constant requirement for technical support could represent a lack of basic knowledge and rules of aviation medicine, thus his application of paragraph 424.17(3)(b) of the CARs can only be poorly applied, demonstrating a high probability of risk for further errors on future MERs. This type of behaviour as previously discussed could easily lead to issuing a pilot medical certificate to individuals who are unfit. This represents an important safety aviation risk and increased safety risk to the public.

[60] Previous attempts at remediation, mostly letters since 2020, are repetitive and highlight Dr. Karpilow’s lack of comprehension of his role as a CAME. He has demonstrated his lack of knowledge of the CARs, especially the medical requirements under Standard 424. Dr. Brooks presented quality assurance evidence that a low incidence of non-compliant MERs provides statistical assurance of an acceptable level of safety. The requirement of having low numbers of non-compliant MERs minimize the safety risk in the aviation industry. Bypassing these medical requirements, and thus repeatedly and constantly providing non-compliant MERs, increases the risk to aviation safety.

[61] During his closing argument, Dr. Karpilow stated, “I put nobody at risk” and “none of the ones that I examined were put at risk.” The Tribunal interpreted his statement as a demonstration that Dr. Karpilow does not see the “potentially disabling” medical conditions that he has encountered as a potential increased aviation safety risk. Furthermore, by certifying student pilots, who in fact had not been certified yet by the appropriate authority, created an unacceptable risk to aviation safety. The Tribunal submits that the fact that Dr. Karpilow did not consider the potential disastrous outcome of his examinations does not eliminate fact that the safety risk was present and uncontrolled.

[62] Dr. Brooks declared that in the context of the new working environment at CAM, the non-compliant MERs, as well as the especially inappropriate medical certificate renewals, not only increase the administrative burden, but mostly put “the safety of aviation and the travelling public at risk.”

[63] The Tribunal does not put much weight on Dr. Karpilow’s statement that much of the MER discrepancies had to do with communication difficulties with CAM. The Minister presented enough written communication to demonstrate constant administrative and technical support. Dr. Karpilow has repeatedly disregarded the application of CARs medical requirements as demonstrated by the numerous cases presented.

[64] In *Bancarz*,³ the Federal Court indicated that “the Minister is entitled to look at a licensee’s entire record” in order to evaluate if the renewal of a licence is in the best interest of

³ *Bancarz v. Canada (Transport)*, 2007 FC 451, paragraphs 46, 49.

aviation safety. The Court also stated that “there **must be either numerous incidents or major incidents with clear evidence of wrongdoing to justify suspension or cancellation**” [emphasis added]. Based on the evidence presented and in consideration of the applicant’s training on aviation medicine, the Tribunal found the evidence presented included multiple incomplete and/or incorrectly completed MERs and unauthorized issuance of medical certifications over a period of five years and justifies the cancellation of the applicant’s CAD. The Tribunal found that at the time of cancellation of the applicant’s licence, he was still making non-compliant MERs (Exhibit 3).

[65] In addition, as established by the Federal Court in *2431-9154 Québec Inc.*,⁴ public interest is “engaged when past non-compliance is serious and repeated enough to conclude that there is a risk of further offences and that the operator must therefore stop using the certificate.”

[66] The evaluation of Dr. Karpilow’s pattern of non-compliant MERs for the past few years has demonstrated that Dr. Karpilow’s non-compliance is recurrent and persistent, and that his aviation medical errors are serious enough to conclude that there is an increased risk of completing further non-compliant MERs. This could easily lead to approving medical certificates to medically unfit individuals, and this represents an unacceptable risk level to aviation safety.

IV. DETERMINATION

[67] The Minister of Transport has proven, on a balance of probabilities, that it was in the public interest to cancel the applicant’s Canadian aviation document as per paragraph 7.1(1)(c) of the *Aeronautics Act*.

February 21, 2023

(Original signed)

Dr. Linda Garand
Member

Representations

For the Minister: Michel Tremblay
For the Applicant: Self-represented

⁴ *Canada (Attorney General) v. 2431-9154 Québec Inc.*, 2008 FC 976, paragraph 73.