



TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *Avtronics Radio Technology 2009 Inc. v. Canada (Minister of Transport)*,
2023 TATCE 7 (Ruling)

TATC File No.: AA-009-22

Sector: Aviation

BETWEEN:

Avtronics Radio Technology 2009 Inc., Appellant

- and -

Canada (Minister of Transport), Respondent

[Official English translation]

Heard by: Written submissions

Before: Joelle Malette, Member

Rendered: February 24, 2023

RULING

Held: The respondent's motion to dismiss the appeal is denied. I find that the appellant's request for appeal is not moot and that there is a concrete dispute between the parties which affects or could affect the rights of the parties.

I decline to award costs to the Minister of Transport or the appellant. I find that the respective motions of each party are neither frivolous nor vexatious. Neither the Minister of Transport's nor the appellant's motion was without merit. Neither party has presented any evidence or argument that the other's motion was brought maliciously or without sufficient reason.

I. BACKGROUND

[1] The respondent, the Minister of Transport (Minister), has asked the Transportation Appeal Tribunal of Canada (Tribunal) to dismiss the appeal of Avtronics Radio Technology 2009 Inc. (Avtronics) on the grounds that the appeal is academic since the appellant's approved maintenance organization (AMO) certificate was reinstated on April 14, 2022.

[2] The appellant, Avtronics, contests the respondent's claim. It argues that the appeal request is not moot and that the appeal should be heard since there is a live controversy between the parties regarding the consequences of the suspension of its AMO certificate. It alleges that the suspension of its AMO certificate was lifted, but not removed from its file.

Review determination

[3] On January 21, 2020, Transport Canada (TC) issued a Notice of Suspension (Notice) to the applicant, Avtronics, advising the company of the decision to suspend its AMO certificate, number 10-90, issued on January 28, 2015. The suspension took effect on February 10, 2020, and the applicant applied for review on February 3, 2020.

[4] The review hearing took place on February 1 and 2, 2022. On April 19, 2022, TC sent the Tribunal a copy of Avtronics' AMO certificate issued on April 14, 2022. On April 28, 2022, the Tribunal invited the parties to make written submissions on the issuance of this certificate by May 4, 2022.

[5] On April 28, 2022, the Minister made comments and indicated that it was not necessary for the Tribunal to render a determination, since the certificate had already been issued, but leaving the matter to the discretion of the Tribunal. The applicant made no comments directly related to the issuance of the certificate.

[6] Since the hearing was over and the Tribunal had heard the evidence presented by the parties, a determination was rendered based on the evidence presented at the hearing, which took place before the certificate dated April 14, 2022, was issued.

[7] On July 11, 2022, the Tribunal rendered a determination confirming the Minister's decision to suspend the applicant's AMO certificate, on the grounds that the applicant no longer met the conditions for issuance of the document.

[8] On August 10, 2022, the applicant filed a notice of appeal of the Tribunal's determination.

[9] On August 18, 2022, the respondent filed the motion to dismiss the appeal which is the subject of this decision. On October 3, 2022, the applicant filed its comments on dismissing the appeal, and on October 7, 2022, the respondent filed a reply.

II. ANALYSIS

A. Issue

[10] The Tribunal must determine whether the appellant's request for appeal should be dismissed on the basis of mootness.

[11] The process for determining whether the appellant's request for appeal is moot involves a two-step analysis. The Tribunal must consider the following issues:

- a. Is there a concrete controversy affecting or potentially affecting the rights of the parties?
- b. If the answer is no and the controversy is moot, should the Tribunal exercise its discretion and hear the case?

[12] Since I conclude that the appellant's request for appeal is not moot, it is not necessary to address the second part of the analysis.

B. Legal framework

[13] The appellant exercised its right of appeal under subsection 7.2(1) of the *Aeronautics Act* (Act) and asked the Tribunal to review the determination the member, Mr. Pietracupa, rendered on July 11, 2022. Under paragraph 7.2(3)(a) of the Act, the Tribunal's appeal panel may dismiss the appeal or refer the matter back to the Minister for reconsideration.

[14] If the case is referred back to the Minister, subsection 7.2(4) of the Act provides that the Tribunal panel, after considering any representations made by the parties, may grant a stay of the decision made under subsection 7.1(7) until the reconsideration is concluded, if it is satisfied that granting a stay would not constitute a threat to aviation safety or security.

[15] Subsection 7.1(2.1) of the Act provides that the Minister's decision to suspend a Canadian aviation document takes effect on the date of receipt of the notice under subsection 7.1(1) by the person on whom it is served or to whom it is sent, unless the notice indicates that the decision is to take effect on a later date.

[16] The provisions at issue in this case are section 573.01 and subsections 573.02(1), 573.10(1) and 573.10(6) of Subpart 573, Approved Maintenance Organizations, of Part V, Airworthiness, of the *Canadian Aviation Regulations (CARs)*, which read as follows:

573.01 (1) An applicant for an approved maintenance organization (AMO) certificate or for an amendment of an AMO certificate that is in effect shall make an application in the form and manner specified in Standard 573 —Approved Maintenance Organizations.

(2) An applicant referred to in subsection (1) shall submit to the Minister with the application a copy of its maintenance policy manual (MPM) required pursuant to subsection 573.10(1).

573.02 (1) The Minister shall issue to a maintenance organization that demonstrates that it meets the requirements of this Subpart an approved maintenance organization (AMO) certificate authorizing the maintenance of specified aeronautical products or the provision of specified maintenance services. ...

573.10 (1) An approved maintenance organization (AMO) certificate holder shall establish, maintain and authorize the use of a maintenance policy manual (MPM) that contains information

to ensure the efficiency of the AMO's maintenance policies, dealing with the subjects set out in Standard 573 —*Approved Maintenance Organizations*. ...

573.10 (6) An AMO certificate holder shall amend its MPM when instructed to do so by the Minister, where the MPM does not

(a) meet the requirements of this Subpart; or

(b) contain policies or procedures that are sufficiently detailed to demonstrate that the AMO's quality assurance program meets the requirements of these Regulations.

C. Minister's submissions

[17] The Minister submits that the Tribunal should refuse to hear the appellant's request for appeal since it is academic. The Minister also argues that the Tribunal should not exercise its discretion.

[18] The Minister is basing its comments on *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 (*Borowski*), which held that an appeal is moot when the decision of a court or tribunal will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. The Supreme Court of Canada (SCC) held that the general policy is enforced in moot cases unless the court exercises its discretion to depart from it.

[19] In *Borowski*, the SCC established that the approach with respect to mootness involves a two-step analysis.

[20] The first step is to ask whether there is a live controversy affecting or potentially affecting the rights of the parties. If the answer is no, the controversy is moot and the Tribunal must proceed to the second stage of the analysis.

[21] The second step consists in asking whether, despite the fact that the controversy has become moot, the facts of the case justify the Tribunal's exercising its discretion to decide the case on its merits. The criteria to be examined at this stage are:

- a. The existence of an adversarial context;
- b. Judicial economy; and
- c. The Tribunal's role in the law-making process.

(1) First step – Mootness

[22] The Minister maintains that the appellant's request for appeal is moot, for the following reasons:

- a. Given that the appellant's AMO certificate was reinstated on April 14, 2022, the very purpose of challenging the respondent's decision to suspend it in January 2020 has disappeared.

- b. Should the appeal be allowed and the determination of the Tribunal member overturned, the only option open to the appeal panel would be to send the case back to the respondent for reconsideration.
- c. However, as the appellant's AMO certificate was reinstated on April 14, 2022, the Minister is of the opinion that there is nothing to be reconsidered by the latter and that the case is therefore academic and does not require the Tribunal's intervention.

[23] The Minister states that the controversy no longer exists and that the case became moot when the appellant's AMO certificate was reinstated on April 4, 2022.

(2) Second step – Discretion

[24] The Minister maintains that the Tribunal should not exercise its discretion given that the criteria to be examined do not justify it. The Minister declares that there are no exceptional circumstances for the Tribunal to exercise its discretion, for the following reasons:

- a. There no longer exists an adversarial relationship given that the appellant received its AMO certificate in April 2022.
- b. To grant the appellant's request for appeal would be a misuse of limited judicial resources to settle a controversy that has become academic.
- c. This case does not lend itself to the law-making process or is likely to change the interpretation and application of the relevant statutory provisions.

[25] The Minister also relies on the words of the Honourable Justice Laskin of the Federal Court of Appeal in *Democracy Watch v. Canada (Attorney General)*, 2018 FCA 195, at paragraph 14, to suggest that discretion must be exercised with caution:

[14] The first factor may support the exercise of the discretion where despite the absence of a concrete dispute, the issues will be fully argued by parties with a stake in the outcome. The second factor includes, where applicable, consideration of whether the case presents a recurring issue, but one that is of short duration or otherwise evasive of court review. The third factor recognizes that the courts' primary task within our constitutional separation of powers is to resolve real disputes. As this Court has stated, "While *Borowski* and cases that apply it do not forbid courts in appropriate circumstances from determining a proceeding after the real dispute has disappeared, this underlying rationale reminds us that the discretion to do so must be exercised prudently and cautiously": *Canada (National Revenue) v. McNally*, 2015 FCA 248 at para. 5.

D. Appellant's submissions

[26] The appellant maintains that its request for appeal of August 10, 2022, is not moot and that, consequently, the Tribunal should not allow the Minister's motion to dismiss the appeal. The appellant relies on the following grounds:

- a. The January 20, 2020, maintenance policy manual (MPM) is still in dispute between the parties.
- b. The January 21, 2020, Notice of Suspension has been lifted and not removed from the appellant's file.

- c. The appellant has suffered a loss of operating income as a result of the suspension of its AMO certificate.
- d. The appellant was forced to write another MPM without being able to obtain an impartial decision on the Notice of Suspension.
- e. The Notice of Suspension of the AMO certificate is the same type of document as an air operator certificate (AOC). The certificate falls within the definition of an aviation document, the direct consequence of the Notice of Suspension issued by TC.
- f. The appeal against the decision must be heard in the interests of full answer and defence and the sound administration of the Tribunal.

[27] The appellant's submissions are based on *Skyward Aviation Ltd. v. Canada (Minister of Transport)*, [2009] 2 F.C.R. 219 (*Skyward*), and *Minister of Transport v. Buffalo Airways Ltd.*, 2016 File No. W-4195-10 (TATC) (*Buffalo*). The appellant claims that there is a great deal of similarity between Avtronics, *Skyward* and *Buffalo*.

[28] The appellant relies on the words of the Honourable Justice Snider of the Federal Court of Appeal in *Skyward*, at paragraph 33, to suggest that its request for appeal is not moot:

[33] Subsection 7.1(1) of the Act [*Aeronautics Act*] is triggered where "the Minister decides ... to suspend ... a Canadian aviation document". Once the decision is made, a notice must be served on the operator. In the case before this Court, the Minister made such a decision to suspend the AOC. The rescinding of the notice does not change the fact that a decision to suspend was made. The only question is whether the "decision" disappears because *Skyward* chose to meet the demands of the Minister to ensure its continued operation. In my view, it does not. So long as the Minister continues to hold that *Skyward* was in breach of its AOC conditions and requires *Skyward* to comply with its demands, the decision to suspend exists. Only the implementation of the notice is suspended.

[29] The appellant also relies on the words of Transportation Appeal Tribunal of Canada member Phillips in *Buffalo* to suggest that the Notice of Suspension and the suspension affect the legal rights of the parties. In *Buffalo*, the Tribunal determined, among other things, that the matter did not end with the rescission of the notice since the operator had to continue to operate in accordance with the Minister's findings or risk the issuance of another notice.

E. Minister's reply

[30] In its reply to the appellant's submissions, the Minister maintains that the *Buffalo* and *Skyward* decisions do not apply in this case, for the following reasons:

- a. In both cases, the Minister had issued a notice of suspension of the AOCs because of proven and/or alleged contraventions of the *CARs* and also, in the case of *Buffalo*, because of breaches of its own operations manual.
- b. Both companies had always contested the alleged contraventions, despite the fact that they had decided to meet the conditions for reinstatement of their respective AOCs.
- c. The notices of suspension in these two cases were based on positive, concrete actions on the part of these companies and/or their respective employees against the *CARs*, and the notices were contested by them.

[31] The Minister argues that in this case, the reasons for issuing the Notice of Suspension of the appellant's AMO certificate are clearly distinguishable, for the following reasons:

- a. The reasons for the suspension of the appellant's AMO certificate are based on the deficient content of its maintenance policy manual (MPM), namely that elements of the appellant's MPM no longer met the requirements necessary for it to remain in effect.
- b. This is not a case in which the suspension of the appellant's AMO certificate is the consequence of contraventions of the CARs or the Act, as in *Buffalo*, or of alleged breaches of its AOC, as in *Skyward*, but rather a case in which the appellant's MPM was imprecise or incomplete, or did not meet the basic requirements for an MPM contained in Part V of the CARs and the AMO standards.

[32] According to the Minister, given that the Notice of Suspension was issued because the basic requirements of the MPM had not been met, the fact that these requirements were subsequently met put an end to the suspension.

F. Should the appellant's request for appeal be dismissed on the grounds of mootness?

[33] I agree with the Minister that the process for determining whether the appellant's request for appeal is moot was set out by the SCC in *Borowski*. Briefly, the approach involves a two-step analysis.

[34] The first step involves asking whether there is a live controversy affecting or potentially affecting the rights of the parties. If the answer is no, the controversy is moot and the Tribunal will proceed to the second stage of the analysis.

[35] The second step involves asking whether, despite the fact that the controversy has become moot, the facts of the case justify the Tribunal exercising its discretion to decide the case on its merits. Given that I have concluded that the appellant's request is not moot, the Tribunal will not address the second step of the analysis.

First step: Is there a live controversy in this case that affects or could potentially affect the rights of the parties?

[36] The Minister contends that there is none and argues that the case became moot from the moment the appellant's AMO certificate was reinstated. The Minister points out that if the appeal were allowed and the Tribunal's determination overturned, the only option would be to send the case back for reconsideration. However, since the AMO certificate has been reinstated and the suspension has ended, the Minister maintains that there is nothing further to review.

[37] Despite the Minister's submissions, I am of the opinion that there is a live controversy here. If the Tribunal hears the appeal and sends the case back for reconsideration, the Minister will not only be asking whether a notice of suspension should have been issued on January 21, 2020, but also whether the appellant's MPM complied with the requirements of the CARs when the notice was issued. This is not just an academic exercise: reconsideration of the case could result in the suspension of the appellant's AMO certificate being removed from the appellant's file. The reinstatement of the AMO certificate on April 14, 2022, does not have this effect. The

January 21, 2020, suspension remains in the appellant's file, and this fact alone could have a lasting effect on the appellant.

[38] Unfortunately, in its submissions, the appellant did not emphasize the lasting effects of the fact that the suspension still appears in its file. I therefore grant little weight to this ground.

[39] The reinstatement of the AMO certificate in 2022 did not put an end to the case. I share the appellant's opinion that the January 20, 2020, MPM is still in dispute between the parties. Although the AMO certificate was reinstated in April 2022, the appellant continues to be prejudiced by the Minister's decisions in that it must continue to comply with the terms of the 2022 MPM in order to retain its AMO certificate, without which it risks being suspended again.

[40] Subsection 7.1(2.1) of the Act provides that the Minister's decision to suspend a Canadian aviation document takes effect on the date of receipt of the notice under subsection 7.1(1) by the person on whom it is served or to whom it is sent, unless the notice indicates that the decision is to take effect on a later date. In the case at hand, the Minister's decision took effect on February 10, 2020, and the suspension remained in effect for more than two years, or 794 days, consequences that could lead to a loss of operating income, as argued by the appellant. In its reply, the Minister does not address this ground.

[41] As stated by Justice Snider in *Skyward*, I am of the opinion that the Minister's power to impose conditions in the interests of air safety must be balanced by the operator's right to have the conditions reviewed by the Tribunal. This principle applies, in my view, to both review and appeals proceedings, provided the appeal criteria are met.

[42] If the Tribunal allows the appeal, it could refer the matter back to the Minister for reconsideration under paragraph 7.2(3)(a) of the Act. The reconsideration would relate to the Notice of Suspension and the January 2020 MPM. If this is the outcome, it could mean that the appellant was right to challenge the decision to suspend its AMO certificate in 2020.

[43] The Minister argues that, given that the issuance of the Notice of Suspension stems from non-compliance with the basic requirements of the MPM, the fact that these were subsequently met put an end to the suspension. For the reasons detailed above, I find that the Minister is oversimplifying matters somewhat, and that despite the "end" of the suspension, there is a controversy affecting or potentially affecting the rights of the parties.

[44] The Minister submits that the *Buffalo* and *Skyward* decisions do not apply in this case and that the reasons for issuing the Notice of Suspension of the appellant's AMO certificate are clearly distinguishable from those cases.

[45] I would like to briefly address the Minister's submissions in this regard. While there may be distinctions between *Buffalo*, *Skyward* and the appellant's case, these are not so great that the underlying decisions and principles do not apply to the issue at hand. Moreover, my conclusions are not based on these decisions, but rather on the conclusions drawn from applying the approach set out by the SCC in *Borowski* to determine whether the case is moot.

[46] Notwithstanding the distinctions that may exist between the *Buffalo*, *Skyward* and the appellant's cases, the alleged reasons for the suspension of the AMO's certificate rested on the

deficient content of its MPM, which did not meet the basic requirements contained in Part V of the CARs and the AMO standards. The January 21, 2020, MPM (which gave rise to the suspension) is at the very heart of the controversy, which affects or could affect the rights of the parties.

[47] Despite the fact that it drafted a new MPM that led to the reinstatement of its AMO certificate, the appellant has always contested the alleged contraventions. This is evidenced by the fact that the appellant filed a review request on February 3, 2020, before the suspension took effect on February 10, 2020.

[48] Since a review hearing cannot be held in such a short timeline, the initial non-compliance finding was a serious and lasting hindrance to the operator's activities. Without the possibility of having the Minister's decision reviewed by the Tribunal before the suspension took effect, the appellant was forced to draft another MPM before obtaining a determination from the Tribunal.

[49] In summary, I am of the opinion that the appellant's request for appeal to the Tribunal does not raise a moot issue and that the Minister's motion to dismiss the appeal should be denied. The Tribunal should hear the appeal filed by Avtronics.

III. COSTS

[50] Both the Minister and the appellant have requested that the Tribunal impose costs pursuant to subsection 19(1) of the *Transportation Appeal Tribunal of Canada Act*, as they each find the other's motion to be frivolous or vexatious.

[51] I decline to award costs to either the Minister or the appellant. I conclude that the parties' motions are neither frivolous nor vexatious. The parties' motions were not without merit. Neither party has presented any evidence or argument that the other's motion was made maliciously and without sufficient reason.

IV. RULING

[52] The respondent's motion to dismiss the appeal is denied. I find that the appellant's request for appeal is not moot and that there is a concrete dispute between the parties which affects or could affect the rights of the parties.

[53] I decline to award costs to the Minister of Transport or the appellant. I find that the respective motions of each party are neither frivolous nor vexatious. Neither the Minister of Transport's nor the appellant's motion was without merit. Neither party has presented any evidence or argument that the other's motion was brought maliciously or without sufficient reason.

February 24, 2023

(Original signed)

Joelle Malette
Member

Representations

For the Minister:	Martin Forget
For the Appellant:	Yves Généreux