Federal Court  Cour fédérale

Date: 20220131

Docket: T-621-21

Citation: 2022 FC 106

Ottawa, Ontario, January 31, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

MARK DINAN

Applicant

and

FEDERAL MINISTER OF TRANSPORT

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mark Dinan seeks judicial review of the Minister of Transport's decision of March 16, 2021 refusing to issue or amend a Canadian aviation document [CAD] because Captain Dinan failed a Line Operational Evaluation [LOE] in June 2018. The decision was issued after the Transportation Appeal Tribunal of Canada [TATC] found the failing grade unreasonable and sent the matter back to the Minister for reconsideration: *Mark Dinan v Canada (Minister of Transport)*, 2019 TATCE 40 (Review) at paras 37–38, 42–43 [*Dinan (TATC)*].

Despite the TATC's conclusion, the Minister on reconsideration found the failing grade appropriate and maintained the refusal to issue the CAD. Captain Dinan makes a number of arguments about the reconsideration process and the propriety of the Minister reaffirming an original decision after the TATC found it unjustified.

[2] In the meantime, however, Captain Dinan undertook another LOE in July 2018 and was successful, thereby maintaining his qualifications. He has continued to fly without interruption and without any apparent impact on his career as an Air Canada pilot.

[3] I agree with the Minister that these latter facts render this application moot. Neither the Minister's decision maintaining the initial refusal based on the unsuccessful LOE nor this application has any legal or practical effect.

[4] Captain Dinan submits that despite the lack of legal or practical effect, the Court should exercise its discretion to decide this matter on its merits. Having considered these submissions, I conclude the Court should not decide the matter. Importantly, the Minister's March 16, 2021 reconsideration decision could have been the subject of a further request for review to the TATC. As a general rule, this Court will decline to review decisions for which a statutory administrative review or appeal is available. The Court should respect Parliament's intention that such issues be decided by the TATC before being considered by the Federal Court.

[5] The application for judicial review is therefore dismissed. In accordance with the parties' agreement, costs are payable to the Minister in the inclusive amount of $2,000.

II. Issue and Standard of Review

[6] Captain Dinan's application for judicial review raises a number of issues about the process followed by the Minister on reconsideration, and the Minister's decision to maintain the refusal of his CAD. I conclude, however, that the mootness issue raised by the Minister is determinative. The mootness analysis proceeds in two stages. The first asks whether the proceeding is indeed moot. The second asks whether the Court should nonetheless exercise its discretion to hear and decide it: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at pp 353–363; *Democracy Watch v Canada (Attorney General)*, 2018 FCA 195 at para 10.

[7] The following two questions must therefore be answered:

A. Is the application for judicial review moot?

B. If so, should the Court exercise its discretion to nonetheless hear the application on its merits?

[8] The mootness issue comes before this Court at first instance. As mootness is a preliminary matter going to whether the Court will hear the application for judicial review, and not to the merits or procedure of the underlying decision, no administrative law standard of review applies: *Ulloa Mejia v Canada (Citizenship and Immigration)*, 2012 FC 980 at para 22; *Budlakoti v Canada (Citizenship and Immigration)*, 2015 FCA 139 at paras 28(1), 37.

III. Analysis

A. *The application for judicial review is moot*

(1) Statutory and regulatory context

[9] Under the *Aeronautics Act*, a CAD is a fairly broad term covering documents such as licenses and permits issued by the Minister in respect of aviation and aeronautics: *Aeronautics Act*, RSC 1985, c A-2, s 3(1) ("Canadian aviation document"). Paragraph 6.71(1)(*b*) of the *Aeronautics Act* provides that the Minister may refuse to issue or amend a CAD on grounds, among others, that "the applicant […] does not meet the qualifications or fulfil the conditions necessary for the issuance or amendment of the document."

[10] The *Canadian Aviation Regulations*, SOR/96-433 contain detailed provisions regarding the qualifications and licensing of pilots. Without needing to get into the regulatory complexities for present purposes, the training and qualifications for Air Canada flight crew are established, developed, and evaluated in accordance with an Advanced Qualification Program [AQP] authorized by Transport Canada. Under the Air Canada AQP, pilot proficiency is primarily evaluated through the LOE, a form of flight test conducted in a flight simulator. A successful LOE documented on a Transport Canada flight test report confers a privilege on a pilot holding an aircraft type rating for a defined validity period. A successful LOE thus constitutes a CAD.

[11] The AQP sets out methods and grounds of evaluation of the LOE. An LOE is broken down into multiple "event sets," which are evaluated by a Transport Canada-approved evaluator

using a scale of 1 to 4 points, with 1 being a “Below Standard” or “Unsatisfactory” grade. An LOE will be considered unsuccessful, and will be terminated, if the pilot receives a score of 1 on their initial attempt of three separate event sets. An unsuccessful LOE does not preclude a pilot from undertaking another LOE to renew their qualifications.

[12] If the Minister refuses to issue or amend a CAD under subsection 6.71(1) on grounds that the applicant does not meet the applicable qualifications or conditions, the applicant may request a review of the decision by the TATC: *Aeronautics Act*, s 6.72(1). The TATC is an administrative tribunal that hears reviews and appeals under a variety of transportation-related statutes including the *Aeronautics Act*: *Transportation Appeal Tribunal of Canada Act*, SC 2001, c 29 [*TATC Act*], s 2. Reviews are heard by a single member of the TATC, while appeals are heard by an appeal panel of three members: *TATC Act*, ss 12–13.

[13] The TATC’s powers on review differ depending on the type of decision it is reviewing. In some cases, the TATC may confirm the Minister’s decision or refer it back to the Minister for reconsideration: *Aeronautics Act*, ss 6.72(4), 7(7)(*a*), 7.1(7). In other cases, the TATC may either confirm the decision or substitute its own decision: *Aeronautics Act*, ss 6.9(8), 7(7)(*b*). A refusal under subsection 6.71(1) of the *Aeronautics Act*, such as that at issue in this case, is in the former category: *Aeronautics Act*, s 6.72(4).

[14] The availability of an appeal to an appeal panel of the TATC also depends on the nature of the decision. While the Minister may appeal some TATC review decisions, only an unsuccessful applicant may appeal a review decision arising from a decision under

subsection 6.71(1): *Aeronautics Act*, s 7.2(1)(*a*). An appeal panel of the TATC can similarly either refer a matter back to the Minister for reconsideration or substitute its own decision, depending on the nature of the underlying decision: *Aeronautics Act*, ss 7.2(3)(*a*)–(*b*), 8.1(3).

[15] This Court has addressed the Minister's reconsideration power under the TATC on a number of occasions over the past decades: *Aztec Aviation Consulting Ltd v Canada*, [1990] FCJ No 154, 33 FTR 210 (TD); *Sierra Fox Inc v Canada (Transport)*, 2007 FC 129; *Bancarz v Canada (Transport)*, 2007 FC 451; *Turner v Canada (Transport, Infrastructure and Communities)*, 2010 FC 613. These decisions teach that:

- the Minister on reconsideration is under a legal obligation to take into account the evidence, representations, and findings of the TATC: *Aztec Aviation* at para 15; *Sierra Fox* at para 14; *Turner* at para 48;

- a reconsideration is not an "automatic adoption" of the TATC's decision, but one would expect it would require "significant circumstances" to depart from the findings of the TATC as an independent expert tribunal, and not simply disagreement with the TATC's decision: *Bancarz* at paras 31, 41–42; *Turner* at paras 49–50;

- the applicant may present new evidence in the reconsideration process, and the Minister may consider new evidence, but the process must be fair and transparent: *Sierra Fox* at paras 13, 15, 62–65, 72; *Bancarz* at paras 32–38; *Turner* at para 38;

- given the Minister's responsibility to the public to ensure that aircraft and air carrier operations are conducted safely, the TATC cannot speak for the Minister, who has the

ultimate authority in respect of the issuance of licenses: *Aztec Aviation* at paras 5–6; *Sierra Fox* at para 6; *Bancarz* at para 31; *Turner* at para 49.

[16] I note for clarity that the point above about the Minister's "ultimate authority" is made in the context of decisions where the TATC can either confirm the Minister's decision or send it back for reconsideration, and not those where the TATC is authorized to substitute its own decision.

(2) Factual and procedural context

(a) *The unsuccessful LOE and the Minister's first refusal*

[17] Captain Dinan undertook an LOE on June 26, 2018 to renew his qualifications as an Airbus A320 pilot. During the LOE, the evaluator gave an Unsatisfactory score of 1 on the initial attempt of three separate event sets. The LOE was therefore considered unsuccessful and was terminated before completion of the evaluation.

[18] Nine days later, on July 5, 2018, Captain Dinan undertook another LOE and was successful. While no separate document is in the record, the successful LOE constituted a CAD. Captain Dinan maintained his A320 qualifications and was able to continue flying for Air Canada without interruption.

[19] On July 6, 2018, the Minister issued a Notice of Refusal to Issue or Amend a Canadian Aviation Document pursuant to section 6.71 of the *Aeronautics Act* on the basis of the

June 26, 2018 unsuccessful LOE. The fact that this notice was issued after the successful LOE appears to be due to a standard 10-day delay between an unsuccessful LOE and the issuance of a notice.

(b) *The TATC's review and decision*

[20] Although he had already completed a successful LOE, Captain Dinan filed a request for review of the Minister's decision with the TATC as permitted by subsection 6.72(1) of the *Aeronautics Act*. Captain Dinan challenged two of the three Unsatisfactory event set grades received during the LOE. The TATC member heard evidence from Captain Dinan; from Captain Jaworski, the evaluator who conducted the LOE; and from Michel Paré, a safety inspector with Transport Canada.

[21] In its decision dated September 12, 2019, the TATC confirmed the Unsatisfactory grade of 1 with respect to two of the event sets, including the one not challenged by Captain Dinan: *Dinan (TATC)* at paras 30, 40–41. However, the TATC concluded that the grade of 1 on event set 3 was unreasonable, and that a grade of at least a 2 would be more appropriate: *Dinan (TATC)* at paras 37–38, 42. As three Unsatisfactory grades on initial attempts of separate event sets were required to fail the LOE, the TATC found the termination of the LOE was not justified and the refusal notice should not have been issued. It therefore referred the matter back to the Minister for reconsideration: *Dinan (TATC)* at paras 42–43.

[22] In summary, the issue with respect to event set 3 had to do with the grading impact of putting the aircraft in an "Undesired Aircraft State" or UAS. The evaluator considered, on the

basis of the relevant grading guidelines, that putting an aircraft in a UAS merited a grade of 1 on the event set. The TATC agreed that Captain Dinan put the aircraft in a UAS. However, "in the absence of any explanation from the Minister's representative as to how to properly apply the criteria of the Grading Guidelines," the TATC considered that putting the aircraft in a UAS did not alone warrant a failure of the event set: *Dinan (TATC)* at paras 35–38.

[23] The Minister did not seek judicial review of the TATC's decision.

(c) *The reconsideration and the Minister's second refusal*

[24] On reconsideration, the Minister followed a directive recently adopted by Transport Canada entitled "Directive for reconsideration of Minister's decision." Under this Directive, after determining that judicial review of the TATC decision will not be sought, the Minister's delegated decision maker appoints a panel of up to three people with appropriate expertise to review the case and make a recommendation regarding the decision. The reconsideration panel prepares a report setting out any new documentation considered, the panel's conclusions and its recommendation. The decision maker then reviews the report, and provides a copy to the applicant to enable them to submit comments. After reviewing the applicant's comments, the decision maker then issues a new decision, either confirming the initial decision or rendering a new one.

[25] In this case, the Minister engaged a reconsideration panel in accordance with the Directive. In doing so, the Minister forwarded to the panel an assessment of the TATC's decision prepared by Transport Canada's Appeals and Advisory Group (AAECG), which posed three

questions. The latter two of these questions effectively asked (a) whether Captain Dinan's actions in event set 3 warranted a grade of 1; and (b) whether an aircraft ending up in a UAS justified a grade of 1 by itself. As Captain Dinan points out, these are questions on which the TATC had given its conclusions in its decision.

[26] The reconsideration panel submitted an initial report. The panel noted, with reference to an Air Canada AQP document that was not before the TATC, that the evaluation guidelines call on evaluators to award the grade that best describes the "weakest element" applicable to the candidate's performance. They also noted that under Air Canada's AQP Grading Guidelines, an assessment of a UAS corresponds to a grade of 1. The reconsideration panel assessed the TATC's decision and conclusions, found them to be inconsistent with the Air Canada AQP document, and considered that if the TATC had had the Air Canada AQP document, it would not have concluded that a grade of at least 2 was appropriate for event set 3. Applying its assessment of the Air Canada AQP, including the Grading Guidelines, the panel answered the questions put to it by concluding that (a) Captain Dinan's actions in event set 3 warranted a grade of 1; and (b) a UAS would normally result in the event set receiving a grade of 1.

[27] The initial report was provided to Captain Dinan, who responded with comments disagreeing with the reconsideration panel's recommendations. Captain Dinan submitted, among other things, that it was improper for the Minister to charge the reconsideration panel with second-guessing the TATC's decision; for the reconsideration panel to consider evidence not before the TATC; and for the reconsideration panel to speculate as to what the TATC's decision would have been if additional evidence had been presented. He also made submissions on the

grading issue itself, and asked the Minister to disregard the recommendations of the reconsideration panel.

[28] The Minister's delegated decision maker, having reviewed Captain Dinan's submissions, accepted the recommendation of the reconsideration panel and maintained the original refusal to issue or amend the CAD based on the failure of the June 26, 2018 LOE. Captain Dinan seeks judicial review of this reconsideration decision.

(3) The application for judicial review is moot

[29] The Minister argues that this application for judicial review is moot. A matter is moot when the decision of the court will not resolve a controversy affecting the rights of the parties and the decision of the court will therefore have no practical effect on such rights: *Borowski* at p 353; *Lukács v Canada (Transportation Agency)*, 2016 FCA 227 at para 7.

[30] At no time before this application for judicial review does it appear to have been raised, or considered, that Captain Dinan had completed a successful LOE and that the initial refusal therefore had no practical effect. Neither Captain Dinan nor the Minister appears to have raised it before the TATC, although the fact that Captain Dinan continued to fly was clear from his statement that he was a Boeing 777 captain with Air Canada at the time of the hearing. The TATC did not address it in their reasons, and neither party addressed it during the reconsideration process.

[31] I have some concern about the Minister's failure to have raised its allegation of mootness before the TATC, a specialized tribunal that may be better able to assess whether there remains any practical effect on a pilot's rights of an unsuccessful LOE after a subsequent successful LOE has been completed. However, as mootness is an issue of policy and practice for the Court, and the issue of mootness of an application for judicial review may be a different issue than, for example, the mootness of a reconsideration process, I do not believe its prior silence on the issue prevents the Minister from now raising mootness before this Court.

[32] Captain Dinan completed a successful LOE on July 5, 2018, apparently before the expiration of his last successful LOE. He thereby obtained the necessary CAD to allow him to continue flying as an A320 captain without interruption. The prior failure of the LOE, and the Minister's refusal to issue a CAD as a result, therefore had and has no effect on Captain Dinan's licensing or ability to fly. Captain Dinan referred to his successful LOE and his continued ability to fly in his affidavit filed in support of this application, but gave no evidence as to any impacts on him personally or professionally of the unsuccessful LOE.

[33] The Minister filed evidence that Transport Canada does not publish a record of a pilot's unsuccessful LOEs. The Minister also relies on the lack of evidence from Captain Dinan about any impact on his role or career at Air Canada, characterizing his subsequent move to the Boeing 777 as a promotion, a characterization Captain Dinan did not contest.

[34] Although the Minister, in raising the issue of mootness, emphasized the lack of evidence of adverse consequences, Captain Dinan did not seek to file any further evidence of the impact of the unsuccessful LOE or the Minister's refusal to issue a CAD. There is in the record passing

reference in an email from Captain Dinan to Transport Canada during the reconsideration process about having the failure "expunged from [his] record." Captain Dinan also opened his submissions to the TATC by referring to his desire to protect his "name and reputation as an experienced, professional, safe and competent pilot in the wake of this recent failure." However, in the absence of any further evidence about any impact of having an unsuccessful LOE on his "record," I cannot take these references as demonstrating that a decision from the Court regarding a prior unsuccessful LOE would have any practical effect on Captain Dinan's rights or reputation. Counsel for Captain Dinan, when asked what would change based on the Court's decision, conceded that it would not change anything. Indeed, in urging the Court to exercise its discretion to hear and decide the matter nonetheless, counsel noted that unsuccessful LOEs were "not uncommon." While this submission was not supported by evidence, it does not speak to there being any material professional or reputational impact on Captain Dinan.

[35] I note in this regard that even if the Court held that the Minister's decision should be set aside, and even if the Minister found that the TATC's conclusions should be implemented, the result could not be that the June 26, 2018 LOE would be considered successful. Since the LOE was terminated immediately after the third Unsuccessful grade of 1 on an initial attempt, that LOE was never completed and it cannot have led to a CAD: see *Turner* at paras 41–42. Nor would there be any practical benefit in either seeking to continue the LOE (if that is even possible technically) or redo it, since the LOE as a whole was redone successfully before the refusal notice was even issued.

[36] I therefore conclude that the matter is moot. This then raises the second question in the mootness analysis, namely whether the Court should hear and decide the matter in any event.

B. *The Court should not exercise its discretion to hear the moot application*

[37] In considering whether to exercise its discretion to hear a moot matter, the Court should consider the extent to which the three basic rationales for the mootness doctrine are present by assessing (1) the presence or absence of an adversarial context; (2) the appropriateness of using scarce judicial resources; and (3) the Court's sensitivity to its role relative to that of the legislative branch of government: *Borowski* at pp 358–363; *Democracy Watch* at para 13. The discretion is exercised cumulatively on consideration of all of these factors.

[38] An adversarial context clearly remains, as Captain Dinan and the Minister fully argued the merits of the matter. Nonetheless, in my view, the other two factors, and in particular the third, weigh against hearing the matter and are ultimately determinative.

[39] With respect to the appropriateness of using scarce judicial resources, to some degree these judicial resources have already been used in the hearing of this application. However, as I have previously had occasion to note, the fact that a matter has already been heard does not itself address the concern about judicial economy: *Gentile v Canada (Citizenship and Immigration)*, 2020 FC 452 at para 16, citing *Borowski* at p 363. While the matter has been argued, the merits—which raise interesting and somewhat complex issues of statutory interpretation and administrative law pertaining to the interaction between the role of administrative review tribunals and this administrative review tribunal in particular, and the role of the Minister as the statutory decision maker in respect of matters that go to aviation safety—have not yet been decided, a matter that itself speaks to judicial economy.

[40] Captain Dinan argues the Court's guidance is necessary for future cases in which a pilot is successful before the TATC and is engaged in the reconsideration process. While I appreciate the desire to have answers to the questions Captain Dinan raises, I cannot accept this is a significant factor in favour of the Court exercising the discretion to hear the matter for three reasons.

[41] First, it is unclear there is a significant demand for such guidance. The Minister has recently implemented a new Directive with respect to reconsiderations, which may take time to iron out. From the case law, it appears there are fairly few occasions where a party is successful before the TATC but then seeks to challenge an adverse decision by the Minister on reconsideration. In any case, other parties will be equally able to raise such issues in the appropriate circumstances if they similarly face a negative decision on a reconsideration.

[42] Second, the answer to at least some of the questions, such as the fairness of the process and whether it was reasonable in the circumstances for the Minister to maintain the failure on the LOE, have elements particular to Captain Dinan that will not affect other parties.

[43] Third, and perhaps most importantly, I question whether these issues are appropriately before the Court in the first place. I will expand on this third reason in considering the third *Borowski* factor, to which I now turn.

[44] The third *Borowski* factor pertains to the proper role of the Court. In *Borowski*, the Supreme Court of Canada considered the respective roles of the adjudicative and legislative

branches of government. However, the question in this case, as in *Gentile*, is between the adjudicative and executive branches, and in particular the Court's recognition of its role vis-à-vis that of the TATC, which the legislative branch has established as the tribunal responsible for reviewing CAD refusal decisions of the Minister: *Gentile* at para 25; *Aeronautics Act*, s 6.72. A recognition of these respective roles is a central aspect of modern administrative law: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 4, 29, 82, 142; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 36.

[45] Although the Minister's decision at issue in this case was a decision on reconsideration, it remained a decision to refuse to issue or amend a CAD pursuant to section 6.71 of the *Aeronautics Act*. Such a decision, like the original decision, is reviewable by the TATC under section 6.72 of the *Aeronautics Act*. Section 6.72 does not limit the TATC's review jurisdiction to first refusals or original refusals. Rather, it appears to apply equally to reconsideration decisions.

[46] As a general rule, this Court will decline to hear an application for judicial review under sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, where an applicant has an adequate alternative remedy, including through the pursuit of an administrative process such as an administrative appeal or review: *Harelkin v University of Regina*, [1979] 2 SCR 561 at pp 574–575; *Strickland v Canada (Attorney General)*, 2015 SCC 37 at paras 40–45; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 78. As the Supreme Court of Canada noted in *Tran*, "while courts have the discretion to hear an application for judicial review prior to the completion of the administrative process and the exhaustion of

appeal mechanisms, they should exercise restraint before doing so": *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 22.

[47] In the present case, the central issues raised involve the role of the Minister on reconsideration, the interplay between a TATC review decision and the Minister's authority on reconsideration, and ultimately the substantive question of whether the TATC's decision or the Minister's decision regarding the grading of Captain Dinan's LOE should be upheld. These are issues on which the TATC should be given the opportunity to first decide and on which the Court should have the benefit of the TATC's views, in accordance with Parliament's "intention to entrust the matter to the administrative decision maker" to decide at first instance: *Vavilov* at para 142.

[48] In at least three decisions, this Court has considered and decided applications for judicial review of reconsideration decisions by the Minister under the *Aeronautics Act*, namely the *Sierra Fox, Turner* and *Bancarz* decisions referred to above. In each of these cases, an initial decision was made by the Minister and the decision was remitted for reconsideration by the TATC. In each, the applicant directly sought judicial review of the reconsideration decision by this Court, rather than further review by the TATC. It appears that in none of these cases was the availability of review by the TATC of the reconsideration decision raised as an issue by the parties or the Court. It appears that Captain Dinan followed the procedure taken in those cases and sought judicial review of the reconsideration decision rather than seeking review by the TATC. The Minister did not object to this approach.

[49] Despite the lack of objection from the Minister, I consider the availability of a review by the TATC to be a relevant factor speaking against hearing this moot application on its merits. It might even have been a basis to decline to hear the matter had it not been moot. In *Aztec Aviation*, Justice Addy noted that where an affected party had an opportunity to be heard by the TATC's predecessor, the Civil Aviation Tribunal, but has not availed themselves of that opportunity, "it would be improper to grant relief under s. 18 of the Federal Court Act": *Aztec Aviation* at paras 17–18. While Justice Addy was dealing with a first decision rather than a decision on reconsideration, and ultimately addressed the merits in the matter before him, his observations on declining relief under section 18 of the *Federal Courts Act* are consistent with the general law on adequate alternative remedies cited above.

[50] Both Captain Dinan and the Minister referred to a concern that review by the TATC of a reconsideration decision might end up in a repetitive loop of disagreement given the TATC's power to refer back for reconsideration and the Minister's power to reconsider. While I appreciate that there may be the possibility of multiple TATC decisions referring a matter back to the Minister, I do not believe this alone means the Court should exercise its discretion to hear a judicial review when a review by the TATC is available. Such a circumstance may arise in any situation where an administrative appeal or review body has the power to refer a matter back to an administrative decision maker. Indeed, it may arise even between administrative decision makers and reviewing Courts. As the majority of the Supreme Court noted in *Vavilov*, "[a]n intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations": *Vavilov* at para 142.

[51] However, this concern does not arise simply because the Minister has undertaken a first reconsideration. It also seems less likely generally given this Court's admonishment that there should be significant circumstances to depart from the findings of the TATC on reconsideration, and not simply the Minister's disagreement with the TATC's findings. Whether the Minister set out adequate grounds to depart from the TATC's decision with respect to Captain Dinan's LOE is something that should be addressed by the TATC. I note that if the TATC again refers the matter back to the Minister, this is a decision that the Minister could bring to this Court on judicial review, not having a right of appeal to a TATC appeal panel: *Aeronautics Act*, s 7(2)(1)(*a*).

[52] Considering the *Borowski* factors together, I conclude this is not an appropriate case for the Court to exercise its discretion to hear a moot application for judicial review. Captain Dinan and the Minister have raised interesting questions about the respective roles of the Minister and the TATC, the nature of the Minister's reconsideration power, the procedure on such a reconsideration, and the line between "significant circumstances" to depart from the TATC's findings and simple "disagreement." However, these are issues best addressed first by the TATC and, in any case, in a matter in which their outcome will have a practical effect on the parties.

IV. Conclusion

[53] The application for judicial review is therefore dismissed as moot. The parties commendably agreed on the issue of costs. The Minister will be awarded $2,000 in costs as the successful party, in accordance with that agreement.

JUDGMENT IN T-621-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. Costs are payable to the respondent in the inclusive amount of $2,000.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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