

Federal Court



Cour fédérale

**Date: 20180129**

**Docket: T-444-15**

**Citation: 2018 FC 97**

**Ottawa, Ontario, January 29, 2018**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**ROTOR MAXX SUPPORT LTD.**

**Applicant**

**and**

**MINISTER OF TRANSPORT**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] In October 2012, Transport Canada determined that Rotor Maxx Support Ltd. (the Applicant, or Rotor Maxx) was not properly recertifying undocumented parts according to *Canadian Aviation Regulations*, SOR/96-433 [CAR] standards. The two tried working together but Transport Canada refused to consider contrary evidence, Rotor Maxx refused to provide a list of recertified parts, and both were confused over what procedure applied. In 2014, Transport

Canada notified Rotor Maxx about its intent to issue a Civil Aviation Safety Alert (CASA) against Rotor Maxx, but without telling them about all the parts at issue. On February 24, 2015, following a review and comment period, Transport Canada notified Rotor Maxx it still intended to issue the CASA and did so.

[2] I judicially reviewed the Minister's decision to issue the CASA for procedural fairness and reasonableness. Because a decision that does not disclose the information relied upon is a decision that lacks procedural fairness, and because an unintelligible decision without justification or transparency is not a reasonable decision, I will grant this application and quash the Minister's decision to issue a CASA for the reasons that follow.

[3] As this is a highly technical and specialized area, I have included the following for reference:

- A glossary of Acronyms - Appendix A
- A timeline of events - Appendix B
- A list of individuals and their respective professional capacities - Appendix C
- Standard 571 Appendix H of the *Canadian Aviation Regulations* "Process to Evaluate Undocumented Aircraft Parts" - Appendix D (and its related flow chart, Appendix E)
- Policy letter titled "Maintenance and Manufacturing Policy Letter 36" [MPL 36] issued on February 2, 2006 by Transport Canada to interpret proposed amendments to the CAR Standard 571 Appendix H process and the flow chart - Appendix F
- *Canadian Aviation Regulation* 571.13 "Installation of Parts, General" – Appendix G

- Civil Aviation Safety Alert regarding aircraft components and parts supplied by Rotor Maxx Support Ltd. dated January 15, 2015 – Appendix H
- Section 9 of the Staff Instruction Civil Aviation Document Development Procedures effective date June 16, 2014 –Appendix I
- Rotor Maxx’s AMO certificate dated December 22, 2014 – Appendix J
- Other relevant sections of *Canadian Aviation Regulations* – Appendix K

## II. Background

[4] Rotor Maxx is a certified Transport Canada Approved Maintenance Organization (AMO) pursuant to CAR 573.02. In addition, Rotor Maxx holds specialized ratings for components, turbine engines, as well as non-destructive testing (NDT). Rotor Maxx specializes in the maintenance and repair of Sikorsky helicopters which have been out of production since 1980.

[5] As with other out-of-production aircraft manufacturers, the original equipment manufacturer (OEM) of Sikorsky helicopter parts cannot supply all maintenance parts on a regular basis. Although special orders for OEM replacement parts can be requested, some replacement parts take up to two years to receive.

[6] Parliament sought to fix this delay by legislatively implementing a process to recertify undocumented parts that meet type design (type design is a requirement of aircraft parts). Parts that can be traced back to the OEM are considered “documented parts.” Parts that cannot be traced back to the OEM are considered “undocumented parts.” While some undocumented parts are unauthorized third party products that do not meet type design, many others are genuine parts

simply lacking the history or proper OEM documentation. The process for AMOs to evaluate and recertify undocumented parts is found in CAR Standard 571 Appendix H and possibly in MPL 36.

[7] The proper application of the Appendix H process formed the core dispute between the parties. Namely, Transport Canada had concerns that Rotor Maxx did not meet Appendix H requirements. Rotor Maxx, however, claims that they met and in some cases exceeded Appendix H requirements.

[8] Extensive discussions took place between Rotor Maxx and Transport Canada from February 2011 to March 2015. The following summary lists some of the most important interactions but is by no means an exhaustive reproduction of the record. A detailed timeline of events can be found under Appendix B.

[9] On March 3, 2011, Rotor Maxx submitted a Maintenance Policy Manual (MPM) to the Minister of Transport for approval. A MPM outlines an AMO's procedures and limitations and must be approved by a Minister's delegate. Rotor Maxx's 2011 MPM included a new procedure under section 9.4 which outlined an added privilege for the company. Section 9.4 allowed Rotor Maxx to recertify undocumented aeronautical parts pursuant to the CAR Standard 571 Appendix H process. The Minister's delegate (Michael Godsell) approved Rotor Maxx's new privilege.

[10] A year later, Chris Fry resigned from his position as Rotor Maxx's Quality Assurance Manager. Chris Fry then advised Transport Canada about concerns he had regarding the process

Rotor Maxx used to recertify undocumented parts. This led Michael Godsell and a colleague to conduct a Process Inspection (PI) at Rotor Maxx's facilities from November 7-8, 2012. During this early stage of the inspection, it became apparent that Rotor Maxx and Transport Canada had different opinions about how to recertify undocumented parts pursuant to the Appendix H process.

[11] Transport Canada issued a PI Finding against Rotor Maxx on February 12, 2013, questioning the recertification of three impugned parts (an engine bolt, a Garlock seal, and a bearing). Although the PI Finding is dated February 12, 2012, that is a typo for obvious chronological reasons. The PI Finding stated these parts did not have sufficient records to verify that they conformed to type design. Transport Canada requested Rotor Maxx address their parts recertification by completing a Corrective Action Plan (CAP) by March 18, 2013.

[12] Rotor Maxx issued a response to Transport Canada disputing the PI Finding. In their letter to Transport Canada, they argued that the three impugned parts are each categorized by aircraft and engine manufacturers as non-critical parts. They go on to argue that they conducted material and dimensional analysis and comparison with a known authentic part (KAP) according to the Minister's Maintenance and Manufacturing Policy Letter #36, dated February 2, 2006 (MPL 36). Rotor Maxx concluded by stating that, as a precautionary measure, they suspended parts recertification in November pending a review. Rotor Maxx requested that Transport Canada withdraw its PI Finding.

[13] On April 26, 2013, Michael Godsell replied to Rotor Maxx on behalf of Transport Canada, refusing to withdraw the PI Finding. In his reasons, Michael Godsell described how a failure by any of the three impugned parts could cause a catastrophic failure and was therefore a critical part pursuant to MPL 36. The parts also needed a material certification from the OEM which was missing. Michael Godsell again requested a CAP (which was by this point overdue) and corrective action for any other non-conforming components which Rotor Maxx could identify. He concluded by suggesting that Rotor Maxx should consider further suspension of its parts recertification program.

[14] Over the next several weeks, Transport Canada personnel exchanged multiple emails questioning their position and that of Rotor Maxx. On May 14, 2013, Keith Labrecque (Regional Manager, Transport Canada Civil Aviation, Standards Coordination) exchanged messages with John Nehera (Associate Director Operations for Transport Canada's Pacific Region) explaining that an exemption to the CAR 571 Appendix H process exists for AMOs "with an avionics, instrument or component rating to recertify parts, within the scope of their approval, if they have the necessary instructions for continued airworthiness to maintain the aeronautical products." It is undisputed that at all relevant times, Rotor Maxx had the appropriate instrument and component ratings and did not go outside the scope of their approval.

[15] On May 17, 2013, Jeff Phipps (Chief, Operational Airworthiness, Standards Branch, Transport Canada Civil Aviation) wrote to Keith Labrecque clarifying that the criticality of a part was not part of the recertification process. Specifically, he wrote that "[o]nce a part has been evaluated and tested and certified we don't have any regulatory requirements to identify the

criticality of the part.” In a further email that same day, Jeff Phipps wrote to John Nehera and Keith Labrecque and copied Michael Godsell, Mitchell Holme (Superintendent, Transport Canada Civil Aviation Safety Inspector, Airworthiness), and John Glavind (Program Manager, Transport Canada, Operational Airworthiness). In this message Jeff Phipps describes how “CAR 571 generically refers to ICAs [Instructions for Continued Airworthiness].” No mention of certification from the OEM is made. He concludes his email by saying that although MPL 36 and the undocumented parts recertification process needs updating, Transport Canada lacks the resources or ability to do so.

[16] In reply, Michael Godsell again suggests that Rotor Maxx ignored the significance of parts criticality despite Jeff Phipps’s acknowledgment that criticality is not a regulatory requirement. To this, John Nehera adds that they “don’t have a problem dealing with the examples that [Rotor Maxx] has recertified.” He goes on to say that “[w]e’ll ask for their data and they’ll not have sufficient data or analysis to confirm conformity. I was just getting background on the ICAs referenced in the MPL. I’ll be arguing that they’re inadequate when they try to use them.”

[17] After a May 22, 2013 meeting with representatives from Rotor Maxx, John Nehera wrote that the process in “Appendix H is worded in general terms to include a range of processes for evaluation. It is not prescriptive [sic].” His notes also reflect an acknowledgment from Rotor Maxx that the documents submitted for the three impugned parts were incomplete. Rotor Maxx would therefore “submit a CAP to Mike Godsell with supporting documentation and an

enhanced process for certifying undocumented parts.” On May 29, 2013, Rotor Maxx submitted its first CAP.

[18] Rotor Maxx’s first CAP was rejected by Michael Godsell on behalf of Transport Canada on June 20, 2013. The reasons for rejecting the CAP were because it “failed to identify all the additional examples of recertified undocumented parts” and “failed to adequately address the causal factors to the finding.” Michael Godsell concludes by demanding Rotor Maxx to cease all parts recertification and submit a revised CAP. The revised CAP needed details about all the recertified parts Rotor Maxx had processed, including traceability information about which aircraft these parts may have been installed on.

[19] Numerous further emails were exchanged resulting in a second CAP submission and independent analysis of the three impugned parts by R.J. Waldron & Company (1987) Ltd (Waldron). The subsequent report provided by Waldron included destructive material analysis of the impugned bolts (three bolts were destroyed out of the batch which were impugned) and concluded the bolts were authentic after comparing them to an OEM drawing. Waldron re-evaluated the impugned Garlock seal pursuant to Rotor Maxx’s newest recertification worksheet and found it was compliant. The impugned bearing was also re-evaluated and found to meet the requirements of the OEM drawing.

[20] The second CAP was rejected on July 22, 2013, for the same reasons as the first CAP rejection. Transport Canada again demanded a list identifying all additional undocumented parts Rotor Maxx had recertified. Although Transport Canada acknowledged receipt of the Waldron



report and said that it was currently under review, they advised the report would not affect the reasons for the CAP rejection. The rejection notice demanded Rotor Maxx remove any reference to the recertification of undocumented parts in its MPM and cease recertification until further notice.

[21] Following the second CAP rejection and its ensuing correspondence, Rotor Maxx hired DTI Training Consortium, International (DTI). DTI had worked with Transport Canada on several occasions in the past and was hired to act as a trusted independent third party in the resolution of their CAP.

[22] After several more internal emails, Mitchell Holme acknowledges that “[t]he physical list would not normally be required as part of a CAP, it would have to be available at our request.” In response Michael Godsell acknowledges that “[t]he CAP now is almost irrelevant.” Mitchell Holme shared this position with Rotor Maxx in an August 23, 2013 email to Matthew MacWilliam (Rotor Maxx’s new Quality Assurance Manager) stating that “Transport is requesting that the ‘list’ be submitted now, asap but before CAP, as it is not directly related to the CAP.”

[23] On September 12, 2013, Rotor Maxx submitted a third CAP. Once again there was significant discussion within Transport Canada and with Rotor Maxx personnel. By the end of October 2013, a Notice of Suspension (NOS) against Rotor Maxx was drafted and circulated within Transport Canada. On November 8, 2013, Transport Canada notified Rotor Maxx that its third CAP was rejected due in part to Rotor Maxx’s failure to submit a list of recertified parts.

[24] Over the following weeks, Mark Trainor (Program Manager, Approved Organization Standards, Operational Airworthiness) emphasized on several occasions that an NOS would be inappropriate. On November 22, 2013, he stated that “[t]he [NOS] was not supported by the documented findings” and on January 22, 2014, warned that he “cannot see where the company has broken a specific regulation... the process and certification of the parts followed the current Appendix H and regulatory requirements.”

[25] In a January 31, 2014, email to Mitchell Holme, Frédéric Bellemare (Civil Aviation Safety Inspector, Standards) emphasizes that “all AMOs that have appendix H approval should be treated equally, and should be sent a similar letter” cancelling their recertification process. The comments by Frédéric Bellemare echoed comments made earlier by Mark Trainor to Jeff Phipps on January 24, 2014, which stated that “if we tell a company in Pacific region that they cannot use this process we must tell all others the same thing.”

[26] Despite the foregoing discussion, on April 4, 2014, Michael Godsell again advocated for Transport Canada to issue an NOS to Rotor Maxx and demand a list of all undocumented parts they recertified. John Nehera informed Michael Godsell on April 11, 2014, that since Transport Canada’s Enforcement division did not support an NOS issuance, they would not proceed.

[27] Several weeks of demands and discussions ensued. During a July 23, 2014 teleconference, Transport Canada acknowledged that they had no records for the basis of a Suspected Unapproved Part Report investigation, and they would instead issue a CASA against

Rotor Maxx. Rotor Maxx was informed of the potential CASA against them on September 11, 2014.

[28] In the meantime, Michael Godsell was sent a box including approximately 15 Work Orders and 340 tasks. Of these, Michael Godsell conducted an “informal review” of seven tasks and concluded that these additional parts were deficient. On September 5, 2014, Michael Godsell informed Jeff Phipps of his informal review and his intention to review the remainder of the tasks. However, Michael Godsell did not conduct any further reviews.

[29] On September 24, 2014, Jeff Phipps confirmed to Michael Godsell that design data was required for recertifying parts and that ICA information could not be used. He suggests that Rotor Maxx should have sent all parts back to the OEM for recertification. A draft CASA was sent to Rotor Maxx for comments on November 19, 2014.

[30] On November 24, 2014, Michael Godsell wrote to Rotor Maxx to inform them that their new Appendix H process was “an excellent template for performing and documenting the recertification of undocumented parts” but could not be accepted as it did not include the MPL 36 process. He added that all aeronautical parts (not just critical parts) required some engineering design data and that ICAs are only for maintenance on an assembly or complete product.

[31] Rotor Maxx provided comments to John Nehera on November 26, 2014, arguing the draft CASA was factually inaccurate, did not reflect a breach of any CAR, and improperly interpreted the Appendix H process. John Nehera informed Rotor Maxx on February 24, 2015, that

Transport Canada's intended to issue the CASA on March 17 2015, almost two and a half years after the initial PI was conducted.

[32] Rotor Maxx filed for judicial review of the Minister's decision to issue the CASA on March 24, 2015.

### III. Issues

[33] Rotor Maxx raises the following issues on judicial review:

- A. Whether the Minister acted without authority and contravened the purpose, object, and scheme of the *Aeronautics Act* by issuing the CASA when Enforcement had refused to prosecute Rotor Maxx for a contravention of the regulations and when Rotor Maxx had never been found by an independent impartial tribunal to have contravened any regulation?
- B. Whether the Minister abrogated, abridged, and infringed Rotor Maxx's right to a fair hearing in contravention of section 2(e) of the *Canadian Bill of Rights* and the rules of natural justice and procedural fairness by issuing the CASA without affording Rotor Maxx the opportunity to make full answer and defence to the allegations against it?
- C. Whether the Minister misinterpreted the recertification procedures as set out in CAR 571, Appendix H and thereby wrongly concluded that Rotor Maxx had breached the regulations when recertifying undocumented aeronautical parts?
- D. Did the Minister act without authority in issuing the CASA?

- E. Whether the Minister abused authority by refusing to allow Rotor Maxx to recertify undocumented parts using its own standard procedure as permitted by the Minister's exemption?
- F. Did the Minister act contrary to the principles of natural justice by issuing the CASA without providing an opportunity for full answer and defence?
- G. Whether the Minister based the decision to issue the CASA on erroneous findings of fact made in an arbitrary and capricious manner and without regard to the facts before him by concluding that Rotor Maxx's recertified parts had created a critical safety issue?

[34] I would reframe the issues much as Transport Canada did:

- A. Did the Minister breach Rotor Maxx's right to procedural fairness in issuing the CASA?
- B. Was the Minister's decision to issue the CASA reasonable?

IV. Standard of Review

[35] The parties agree, as do I, that the applicable standard of review of the Minister's decision to issue a CASA is reasonableness. The CASA was introduced on October 1, 2010, as a non-mandatory and discretionary means of alerting the public about situations that the Minister finds satisfy the four criteria in the Staff Instruction. Thus, it involves the Minister applying expertise in civil air safety to interpret the required criteria in the Staff Instruction. Such decisions are afforded deference and are reviewed for reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9).

[36] Issues of procedural fairness are reviewed on the correctness standard (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

V. Conclusions

[37] The Court appreciates the Respondent counsels' concise and relevant arguments as well as the fact they conceded the difficulties in their arguments. Despite their advocacy, I will grant this application for the reasons that follow.

[38] The breach of procedural fairness is determinative of this review, but the decision was also unreasonable. This decision did not exhibit justification, transparency, and intelligibility within the decision making process and was not within the range of possible, acceptable outcomes, defensible in fact and law.

VI. The Statutory Scheme

[39] Both parties agree, as do I, that the object of the *Aeronautics Act*, RSC 1985, c A-2 [*Aeronautics Act*] is civil air safety. The Minister bears a heavy responsibility to the public to ensure their safety. This is not a responsibility that was taken lightly on these facts by either party.

[40] Rotor Maxx is an AMO, and filed an AMO certificate dated December 22, 2014, that supersedes a certificate dated July 29, 2010. This AMO certificate was approved pursuant to CAR 573.02 for aircraft, components, engines, and NDT (attached as Appendix J).

[41] The legislation that empowers the steps taken by Transport Canada is extensive but, for ease of reference, I have only included the material directly related to these facts. The legislation is attached in appendices, in the logical order.

VII. Objection Ruling

[42] During the hearing, Transport Canada objected to a document Rotor Maxx wanted filed (a photo on the last page of Certified Tribunal Record [CTR] Volume 8) as it was not in the CTR when the cross examination took place. I will grant the objection and disregard that document.

VIII. Analysis

A. *Did the Minister breach Rotor Maxx's right to procedural fairness in issuing the CASA?*

(1) Procedural Fairness-Factors

[43] A CASA is an informational bulletin sent to all industry members providing immediate updates on critical safety issues, aeronautic recommendations, and alerts. The authority to issue a CASA is found under the heading "Civil Aviation Safety Alerts" of the Transport Canada Staff Instruction, SI QUA-003, at section 9.

[44] The Minister's position is that because CASAs are issued for urgent aviation safety issues, the amount of procedural fairness attracted by a decision to issue a CASA is minimal. The Minister submits that the low procedural fairness is also due to the fact CASAs are alerts notifying the public of a concern and possible problem, but are not entered on an aviation record.

Transport Canada says they met their procedural fairness obligations by letting Rotor Maxx review the CASA before issuing it.

[45] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 22 [*Baker*], Justice L'Heureux-Dubé, on behalf of the Supreme Court of Canada (SCC), affirmed a duty of procedural fairness in the making of administrative decisions. Specifically, administrative decisions must be made “using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context.” She added that the amount of procedural fairness owed depends on the context, and so the amount may not be the same in every case. Accordingly, I must consider all the circumstances leading to the decision in this case to determine the extent and content of the Minister’s duty of procedural fairness.

[46] According to *Baker* at paragraphs 23-26, factors to consider when assessing the minimum degree of participatory rights required include:

- the **nature of the decision** being made and process followed in making the decision;
- the **nature of the statutory scheme** and the terms of the statute pursuant to which the body operates;
- the **importance of the decision to the individuals** affected;
- the **legitimate expectations** of the person(s) affected by the decision;
- the agency or administrator's **choice of procedure**.

[47] **Nature of the decision-** Before Transport Canada may issue a CASA, the decision must satisfy the four criteria set out in the Staff Instruction. The criteria include whether the issue is a critical safety matter and whether the information needs urgent dissemination.



[48] In this case, Transport Canada's application of the Staff Instruction came after investigations, communications with Rotor Maxx, and at times the use of the MPL 36 guidelines to interpret the Appendix H recertification process. The Staff Instruction itself says that the CASA consultation process is discretionary, and amendments are allowable after its publication. This illustrates that the process of deciding to issue a CASA does not resemble the judicial process, and places Rotor Maxx's procedural fairness participatory rights on the lower end of the spectrum.

[49] The second factor is the **nature of the legislative scheme**. The regulatory scheme is very complex and important to public safety. As a component of this scheme, the CASA plays an important role in the Minister's execution of the duty to ensure public safety. This important safety role places the participatory rights at the lower end of the procedural fairness spectrum.

[50] Once the decision to issue a CASA is made and the document is published, amendments may occur. However, the *Aeronautics Act* and its accompanying regulations do not allow a right of appeal and only judicial review is possible. The procedural fairness obligations on the Minister are higher due to this feature.

[51] The third factor is the **importance** of the decision to issue the **CASA to the individuals** affected. While Transport Canada pointed out that a CASA is not entered on an AMO's record, an adverse entry on an aviation record is not the only way to affect the reputation of an AMO. One must remember that CASAs are issued in the aviation industry where safety is of the utmost importance. And alerts to the public about critical safety issues may cause huge financial

consequences to the AMO it is issued against. Such an alert may also be injurious to commercial reputation because it impacts the perceived integrity and professionalism of the AMO. On the other hand, airworthiness is of extreme importance to the Canadian public. The safety aspect tempers the procedural fairness which was raised higher on the spectrum due to the serious effect it may have on those it is issued against.

[52] The **legitimate expectation factor** is very dependent on the particular facts of a case. On these facts, Rotor Maxx had worked with and continued to cooperate and work with Transport Canada to meet all the requirements as they moved towards an acceptable CAP. Rotor Maxx was just finalizing the fourth CAP before the CASA was issued. The Minister chose to exercise the discretion afforded under the Staff Instruction, and provided the draft CASA to Rotor Maxx for their review and comments prior to its issuance.

[53] In the highly regulated aeronautics industry, there is a legitimate expectation that Transport Canada can explain with clear and intelligible reasoning how any CASA they issue satisfies the Staff Instruction criteria. In addition, there is a legitimate expectation that the Minister consider the relevant comments brought forward.

[54] In this case, this puts the participatory rights level higher on the spectrum, though I could envision other urgent critical safety fact situations that would rest lower on the spectrum.

[55] **Choice of Procedure** - The Minister chose to establish the CASA and its related criteria in the Staff Instruction. The Staff Instruction (see below) is clear that if all the CASA

criteria are not met then Transport Canada is to consider another option:

9.2(3) If it does not meet the criteria in paragraph (1), then it should be considered as another type of document, such as an Airworthiness Directive or Advisory Circular.

[56] The Staff Instruction criteria and its sequence of steps are important because they help ensure the Minister satisfies the duty of procedural fairness. In this case, Transport Canada reversed the steps in the Staff Instruction by first considering another type of document; in particular, an NOS. And it was only when Rotor Maxx did not meet the criteria for the NOS sanctions that Transport Canada considered a CASA (see above paragraphs 26 & 27) but never thereafter considered an Airworthiness Directive or Advisory Circular. The requirement to consider other options attracts a higher level of procedural fairness as the instruction is specific: all the criteria must be met, otherwise other options must be considered. The exercise of ensuring the criteria are met would have enabled Transport Canada to explain how Rotor Maxx met the criteria— and if they did not meet the criteria, then Transport Canada had a positive directive to consider other options. According to *Baker*, deference is given to the Minister's choice of procedure, but the steps taken must satisfy the duty of procedural fairness which is higher on spectrum due to the Staff Instruction criteria.

[57] When all of these factors are balanced, the participatory rights begin on the lower end of the scale as the urgency and critical safety factors are of great weight. Cumulatively, however, the particular facts of this case then raise the content and extent of procedural fairness to a higher level that would include: notification to Rotor Maxx about all the parts tested; the reasons Transport Canada felt that all the criteria for a CASA were met; an opportunity to respond; and a transparent procedure to recertify parts. In other words, procedural fairness required the absence

of a moving target of what was needed to have an approvable CAP, an explanation about how the criteria for a CASA were met, and an explanation about the other options available if the criteria were not met.

[58] Rotor Maxx made a number of arguments related to alleged procedural unfairness that fit into the reasonableness analysis. For that reason, I will only deal with the arguments in this section that clearly fit into the issue of procedural fairness.

(2) Additional Parts - Without Opportunity to Respond

[59] Rotor Maxx alleged that Transport Canada acted procedurally unfair in the course of this matter. For instance, Rotor Maxx had only been told that Transport Canada had identified three (3) parts as being at issue, but would later learn the decision to issue the CASA was based on an additional 17 parts under review from the additional tasks reviewed in the work orders. It was only during the examinations for the injunction motion that Rotor Maxx found out that Transport Canada had considered and made their decision on these additional undisclosed parts. Prior to this, Rotor Maxx had made three CAP submissions, hired DT1 Training Consortium to assist them, and was preparing a fourth CAP submission. But since Rotor Maxx was unaware about additional parts at issue, they had no opportunity to address Transport Canada's concerns, nor provide submissions other than on the three parts they thought were at issue.

[60] I note that I use the figure of 17 additional parts as that is the most consistent number used by the parties, although it may have been 7 or 10 additional parts. The fact is, whether the amount is 7, 17, or somewhere in between, it was a significant amount more than the three parts

Rotor Maxx knew were at issue regarding critical parts, destructive testing, and type design. The exact number does not impact this analysis.

[61] Transport Canada submits that they repeatedly went above and beyond any duty of procedural fairness owed. Although Rotor Maxx was not informed of the 17 additional parts reviewed by Michael Godsell, Transport Canada argues Rotor Maxx had no procedural right to know every piece of evidence. Transport Canada's position is that Rotor Maxx repeatedly failed to address the Minister's concerns, was provided notice that they intended to issue a CASA, and were even provided an opportunity to comment on a draft CASA prior to its issue. A CASA, by its very nature, is not an enforcement document and is not an adverse entry on a CAD holder's aviation record. As a result, the Minister says that only a low duty of procedural fairness is owed and the failure to inform Rotor Maxx of the additional parts being considered does not breach procedural fairness. After a review of the years of correspondence in letter and email form, as well as the minutes of meetings, it is hard not to be struck that something was unfair. But of course the unfairness I see in this case is something very particular to these facts and not something that can or should be applied in universal or widespread fashion to the industry or issuance of CASAs.

[62] Part of the unfairness is that Rotor Maxx was never made aware of the additional parts under review. Instead, all of the discussions between the various Transport Canada employees, Rotor Maxx individuals, their legal counsel, as well as the numerous CAP submissions and consultant work revolved around the findings related to three parts. For instance, the parties

discussed how recertification should take place in regards to those three parts, and how to apply the legislation in force at the time to those three parts in particular.

[63] Rotor Maxx went above and beyond the Minister's own requirements to prove the authenticity of those three parts. For example, they hired Waldron to prove that each of the three impugned parts met the proof of conformance, which involved destructive testing amongst other proof of conformity and safety testing. Michael Godsell admitted he did not look at the proof of conformance as it would take some time to review, and advised Rotor Maxx that the proof of conformance did not prove anything.

[64] Rotor Maxx submitted a detailed report to Transport Canada about the bolts, bearing, and seal. And Rotor Maxx's evidence was that they would have provided the same analysis for the 17 additional parts but was not provided with the opportunity to do so before the decision was made to issue the CASA.

[65] Transport Canada's review of the additional parts was cursory and only looking for engineering drawings. Nevertheless, Transport Canada also concluded in this informal review that Rotor Maxx had a "systemic issue" within its parts recertification program and was non-compliant. It is evident from the injunction hearing evidence that the Minister used the cursory review of the additional undisclosed parts to move the process to the issuance of the CASA.

[66] Disclosure is a basic tenant of procedural fairness. Generally, the obligation on a decision maker is to disclose information prior to making a decision. As the SCC explained in *May v Ferndale Institution*, 2005 SCC 82 at paragraph 92:

In the administrative context, the duty of procedural fairness generally requires that the decision-maker discloses the information he or she relied upon. The requirement is that the individual must know the case he or she has to meet. If the decision-maker fails to provide sufficient information, his or her decision is void for lack of jurisdiction.

[67] Of course there are times where urgency may require a departure from the general rule. But on the facts of this case, the actions of the Minister illustrate the general rule still applied. For instance, a lengthy consultation period took place after the informal review of the additional parts. Despite this passage of time, the additional parts remained undisclosed.

[68] At this hearing, binders full of correspondence and reports were provided, but as a result of the nondisclosure, the information was limited to the three parts. Once Rotor Maxx was finally told at the cross examinations of the testing of the additional 17 parts, they then provided evidence that each of those parts met the standards. Given the facts of this case, I find that the additional undisclosed parts were important, and disclosure was necessary so that Rotor Maxx could answer the case against them.

[69] Transport Canada also failed to disclose some of its conclusions. For instance, in making the decision to issue the CASA, Michael Godsell concluded the bolt, bearing, and seal were critical but did not say why. In fact he came to this conclusion despite contacting Sikorsky and GE who said these were **not** critical parts. Michael Godsell attests in his cross examination that

he relied on info from Richard Manning (a Transport Canada employee with technical Sikorsky training) before swearing his affidavit about the criticality of the parts, but no record exists of their conversation. Although Michael Godsell also relied on a Google search for his affidavit, he admits he did the Google search **after** swearing his affidavit. The Minister began drafting a CASA on July 23, 2014, assuming Rotor Maxx would fail to provide the demanded documents by the deadline. But throughout the consultation process, Michael Godsell never informed Rotor Maxx of his inquiries with Sikorsky, his inquiries with General Electric, the results of his Google search, his discussions with Transport Canada colleagues, or of the 17 other parts he reviewed. Even Michael Godsell's own colleague, John Glavind, disagreed with his interpretation of the Appendix H process (which was also not communicated to Rotor Maxx). It is unknown why Michael Godsell felt all engine, transmission, flight control, and drive train parts are critical as he did so without making reference to where it states this in the Appendix H process. This lacks transparency.

[70] Although Transport Canada says they went above and beyond the duty of procedural fairness by allowing Rotor Maxx to review and comment on the draft CASA, a review and comment is meaningless if the party does not know the case against themselves. I do not agree that all the procedural fairness needed in this case was to show Rotor Maxx the draft CASA. On the facts of this case, the content of the duty of fairness included notifying Rotor Maxx about the additional parts at issue as well as other information obtained and used so they could know the case against themselves.



(3) Moving Target

[71] By way of background, on February 2, 2006, Transport Canada issued MPL 36 to assist AMOs interpret proposed amendments to the Appendix H. However, the proposed amendments never came into force.

[72] Confusion within Transport Canada regarding whether Rotor Maxx was to follow the MPL 36 is sprinkled throughout these facts. Specifically, the confusion relates to the fact that, although MPL 36 came into effect immediately upon its release, the MPL 36 policy itself is in regards to proposed amendments to the Appendix H regulatory process that never came into force. The result is the limitation cannot run because the crystalizing event of legislative amendments coming into force has still not occurred.

[73] As a result of this confusion, Transport Canada's underlying decisions which led to the CASA are sometimes based on reasoning that the MPL 36 is valid and sometimes that it is invalid. For instance, on June 15, 2011, when Michael Godsell approved Rotor Maxx's MPM, he did so without requiring the MPL 36 process. Later, Michael Godsell stated he followed the MPL 36 policy in his November 2012 PI of Rotor Maxx's facility. Similarly, in an email dated April 11, 2013, Jeff Phipps stated the MPL 36 is valid.

[74] Yet on January 22, 2014, Mark Trainor said an NOS is legally unsupportable because Rotor Maxx had not broken a single regulation, a conclusion that indicates MPL 36 is valid. In accordance with this, a report dated April 30, 2014 by Enforcement Manager, Toke Adams

explains the Notice of Proposed Amendments was “not yet promulgated at the time of the alleged contravention. The MPL was still in effect; **however, it was not enabled** through CAR 571” (emphasis added). More confusion within Transport Canada of what the target was that Rotor Maxx had to meet.

[75] In this case, Transport Canada used the MPL 36 process in their inspection of Rotor Maxx even though the limitation period had not started (as the regulations had not been promulgated). The difference between the MPL 36 process and the Appendix H process is apparent in flow charts provided by Transport Canada which summarize the steps to take. The Appendix H process also suggests multiple means may be used for conformity.

[76] The difference between the processes is also apparent from internal Transport Canada emails discussions dated May 16, 2013 to Jeff Phipps. This discussion explains “STD 571, Appendix H, does not mention criticality but MPL defines “critical as”... parts whose failure or malfunction could cause a catastrophic failure...” and “non-critical” parts as those parts that failure would result in “...a possible loss of system redundancy.” The email discussion then asked if the three specific parts (the engine bolts, Sikorsky bearing, and Sikorsky gearbox seal) are “critical” for the purposes of undocumented parts. Jeff Phipps’s response deals with the three examples and after a detailed discussion he says:

However the data required to confirm their conformity during the undocumented parts evaluation could be data used to evaluate a non-critical part. Again the important part of the evaluation is if there is sufficient data to confirm conformity. Once a part has been evaluated and tested and certified we don’t have any regulatory requirements to identify the criticality of the part.

[77] John Nehera then responded that there was confusion surrounding the MPL 36 permitting the use of an ICA. John Phipps answered the specific question and ended with:

Based on this we have changes to make to CAR 571 once TCCA officially incorporates the definition of ICAs into the CARs. We also have a longstanding project to update MPL-36 and the undocumented parts process but have not had the resources to update the CARs yet. Well plus even if we did have the resources CARAC is not functioning.

[78] The line of emails ends with the comment that they will deal with the examples and see if they have the sufficient data to confirm conformity.

[79] All this is to say that whether or not the MPL 36 is valid, it is unreasonable to make a decision that Rotor Maxx was not certifying undocumented parts properly when Transport Canada was unsure of which flow chart was in force. The duty of fairness requires transparency in a decision maker's choice of procedure. Clearly, the procedure in this case lacked transparency. Transport Canada's decision makers were unsure if the MPL 36 is supported by the regulation or, as the Enforcement Manager concluded, in effect but not supported by regulation. This confusion led a Transport Canada official to state that "all AMOs that have appendix H approval should be treated equally, and should be sent a similar letter" cancelling their recertification process. That equal treatment did not occur, and Rotor Maxx argued that they were treated differently than other AMOs. As a result, the consultant focused on meeting what they saw as an ever shifting target given by Transport Canada due to their confused interpretation about whether or not MPL 36 applied. This confusion within Transport Canada illustrates the moving target that Rotor Maxx had to meet was unfair.

[80] I find that the decision to issue a CASA was procedurally unfair when applying the *Baker* factors. That does not of course mean that every decision to issue a CASA must meet the procedural fairness that is dictated in this situation as this is a unique set of facts as outlined above. This keeps in mind Justice L'Heureux-Dubé's directions that procedural fairness requires "a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context," and that the extent of the procedural fairness owed will change accordingly with the totality of the circumstances of the decision at issue.

(4) Improper Motive & Misfeasance

[81] Rotor Maxx suggested that the Minister issued the CASA for an improper purpose. The Minister countered that the only evidence of misfeasance is the delay in issuing the CASA and said this delay is due to the lengths through which the Minister tried to work with Rotor Maxx. The Minister submits that at all times the concern about improperly recertified undocumented parts being used by industry members was the reason Transport Canada issued the CASA.

[82] Rotor Maxx went on to argue that the Minister breached the principles of natural justice by acting with an improper motive and acting outside the purpose of the *Aeronautics Act* in issuing the CASA.

[83] Rotor Maxx alleged that Transport Canada decided to issue a CASA as a way of avoiding the statutory right of review afforded under other *Aeronautics Act* enforcement measures. As well, prior to issuing a CASA, Transport Canada had planned to issue NOS to Rotor Maxx for failing to produce a list of all the recertified undocumented parts.

[84] The Airworthiness department checked with Mark Trainor to see if Rotor Maxx had contravened the regulations. He concluded that Rotor Maxx had applied the Appendix H process (or something similar) and followed the regulatory requirements. Additionally, he could not see where Rotor Maxx had broken a specific regulation. It was partly based on this analysis that the Transport Canada Enforcement division recommended not to proceed with an NOS. Despite the fact that Mark Trainor was someone who Jeff Phipps trusted and relied on, Jeff Phipps later said that Mark Trainor's report was just his opinion based on the information at that time.

[85] According to Rotor Maxx, when the Transport Canada Enforcement division would not support the NOS (as they had no evidence of non-compliance), the CASA was used as an alternative way to punish them. Rotor Maxx submits the CASA led to huge financial ramifications and Transport Canada was procedurally unfair in pursuing this alternative.

[86] I see no basis for these submissions on improper motive and misfeasance, and dismiss the argument that the Minister acted for improper purposes.

B. *Was the Minister's decision to issue the CASA reasonable?*

[87] Rotor Maxx presented several arguments related to the following: the criteria to issue a CASA; whether the parts in question were critical; if there was a critical safety issue; and the process and substance of developing a CAP that is acceptable to Transport Canada. Some of those arguments were put forward as procedural unfairness, but are better categorized as going to whether the decision was reasonable.

[88] Counsel for the Minister presented concise arguments on the judicially reviewable issues presented regarding reasonableness. The Minister's position is that safety was always the first and foremost concern. According to Transport Canada, it was impossible to determine which undocumented parts had been recertified incorrectly or their whereabouts. Because of this, Transport Canada submitted their decision to issue the CASA was reasonable.

[89] Counsel acknowledged that it appeared on the record that some personal differences had arisen between certain members on either side of this dispute. However, counsel also argued that despite the differences between a select few people, the overall decision made by multiple members of Transport Canada was reasonable.

[90] In order to issue a CASA, the matter must satisfy **all of the criteria** in section 9.2 of the Staff Instruction:

9.2 Initiation of CASA

**(1) All of the following criteria are to be considered when determining if a CASA is to be used.**

**(a) Is it a critical safety issue?**

**(b) Does the information need to be disseminated urgently?**

**(c) Is there a recommended action?**

**(d) Is this the best means to address the issue?**

(2) If all of the criteria are met in paragraph (1), then a notice of intent should be communicated to the other Branch responsible for the issuance of a CASA.

**(3) If it does not meet the criteria in paragraph (1), then it should be considered as another type of document, such as an Airworthiness Directive or Advisory Circular.**

[Emphasis added]

[91] The Staff Instruction explains the purpose of a CASA is “to convey important safety information and recommended action to the appropriate stakeholders” (at section 9.1(2)). In addition to the four criteria that each CASA must satisfy, the Staff Instruction repeats the necessity for urgency and timeliness :

9.1 (2)...The information contained in a CASA is critical and shall be **sent in a timely manner**.

...

(5) **Due to the urgency of disseminating critical safety information**, the consultation process for CASA’s may differ from other documents.

...

9.4 Consultation of CASA

**Due to the urgency of disseminating critical safety** information, the consultation process for CASAs is left to the discretion of the accountable manager.

[Emphasis added]

[92] Transport Canada’s position is that Rotor Maxx did not provide a list they felt was urgent to receive before some part failed and jeopardized someone’s safety. The Minister argued that a CASA is not an adverse entry on an aviation record or a punishment. Instead, Transport Canada describes a CASA as simply a notice to all other industry members that there may be a possible risk. When it comes to safety, the Minister submits there is a responsibility to err on the side of safety.

[93] Transport Canada submits that a CASA is for urgent situations, and a safety risk was always present in this case. Transport Canada said the reason for the delay is because they tried

to work with Rotor Maxx. Transport Canada added they may have allowed the delay, but the CASA was still issued with urgency.

[94] While I agree that a CASA is an effective document in situations of critical safety that require urgent dissemination, I do not agree that the Minister reasonably decided this matter required urgent dissemination. (see also paragraphs 103 & 104 below)

[95] First, the Minister's decision is plagued by an incorrect analysis of a CASA. Transport Canada's position that "[a] CASA is simply a notice to all other industry members that there may be a **possible risk**" (emphasis added) does not align with the Staff Instruction criteria which mandates the existence of **critical safety information that requires urgent dissemination.**

[96] In this case, Transport Canada **did not** issue the CASA after their audit; after a number of failed CAP submissions; or after they received the draft comments from Rotor Maxx. Instead the CASA consultation process itself took more months to complete after a long investigative and CAP process, making the Minister's finding of urgency unintelligible and unjustifiable.

[97] The CASA issued in this case says "that Rotor Maxx Support Ltd. did not consistently determine that the parts they were certifying for installation on components or parts that were for sale met their approved type design." The CASA then recommends that anyone who used one of these parts or whose inventory contains such parts quarantine the part until the airworthiness of the part is determined. But the CASA blithely disregards the evidence submitted by Rotor Maxx that on June 11, 2013 —approximately 1 ½ years before Transport Canada issued the CASA—



they voluntarily quit distributing uncertified parts. During the comment and review period, Rotor Maxx explained to Transport Canada the significance of this voluntary action: since the parts at issue are small consumable parts they would have been re-overhauled already. That is to say, by the time the CASA was issued, the parts would already be out-of-service on civilian aircraft as Rotor Maxx had not been able to use the Appendix H process for 17 months.

[98] Other important evidence before the decision maker was not considered. For example, Michael Godsell admitted he ignored the full destructive testing results for the three parts. The resulting report he ignored had shown that the parts conformed and there was no safety issue.

[99] On February 24, 2015, after the review and comment period, Transport Canada notified Rotor Maxx about its decision to issue the CASA despite their comments. This decision—again, a decision that critical safety information required urgent dissemination—was made 27 months after the PI finding on November 7, 2012. This passage of time demonstrates that the decision maker had enough time to consider the information brought forward by Rotor Maxx. The decision is not within the range of acceptable outcomes, defensible in fact and law.

(1) Factual Error

[100] Rotor Maxx argued the CASA contains several material errors. Or, as Rotor Maxx characterized the issue, Transport Canada proceeded on “alternative facts.”

[101] Transport Canada provided the draft CASA to Rotor Maxx’s legal counsel on November 19, 2014, and for their response by December 3, 2014.

[102] Rotor Maxx's legal counsel responded on November 25, 2014 in a detailed letter with legislative references and point-by-point discussion about why the draft CASA did not comply with the criteria set out in their Staff Instruction at section 9.2(1). In that letter Rotor Maxx's legal counsel pointed to several errors, including the statement that Rotor Maxx "certified undocumented parts during the period between June 15, 2011 and April 22, 2014" when in fact Rotor Maxx had voluntarily quit recertifying parts on June 11, 2013.

[103] Additionally, the evidence shows that Transport Canada knew that Rotor Maxx had voluntarily quit recertifying parts before receiving this letter, as seen in a Transport Canada document titled "Teleconference Record, Decisions & Actions" dated July 23, 2014. These teleconference notes first say: "The company voluntarily suspended its recertification process in June 2013" and after much discussion: "Decision taken to pursue the CASA process." The participants of that teleconference are named as: J. Glavind, M. Trainor, J. Pilon, M. Holme, M. Godsell, R. Lau, P. Tang, S. Stanfield, B. Caminsky, and J. Nehera. The individuals that were informed that Rotor Maxx was not certifying parts since June 2013 were some of the same individuals that were involved in the issuance of the CASA that said Rotor Maxx certified parts between June 15, 2011 and April 22, 2014 which is in error.

[104] The letter also addressed the lack of urgency and critical safety. For instance, the letter points out that Transport Canada waited 25 months to act after finding out about the lack of paper for some parts, and aircraft had flown at least 17 months without any issues. As explained earlier, 17 months is significant. By this time these small consumable parts would have been

both re-overhauled and out-of-service on civilian aircraft. In addition, the letter argued there was no urgency because Rotor Maxx had quarantined the other parts not for civilian end users.

[105] Although not stated in the letter, further evidence, such as the full destructive testing on the three parts (again, the only parts at issue that Rotor Maxx was aware of), was before the decision maker. This evidence had shown that the parts conformed and there was no safety issue, but was not considered by the decision maker.

[106] In a response dated February 24, 2015, John Nehera states that they have reviewed Rotor Maxx's comments regarding the draft CASA and will not make any substantive changes when they release the CASA on March 17, 2015. Rotor Maxx indicates this error caused them further loss of their reputation.

[107] I agree that the error makes the decision unreasonable because this illustrates the decision maker did not consider the proper issue, and proceeded without ensuring the Staff Instruction criteria were satisfied. The effect of this error is apparent from John Nehera's response to Rotor Maxx's comments, where he does not consider errors that are relevant to the criteria to be substantive errors: In particular he states that "[w]hile the comments have resulted in minor changes to the CASA in terms of qualifiers and process, they continue to reflect an incorrect interpretation of the Canadian Aviation Regulations and have **therefore not resulted in substantive changes to the original draft**" (emphasis added).

[108] Although given twenty days to respond (from November 14, 2014 until December 3, 2014), Rotor Maxx provided a full response by November 24, 2014. And yet despite the delay in Transport Canada's response (dated some months later on February 24, 2015), their decision was still to proceed with issuing the CASA on March 17, 2015. After this additional passage of time the Minister's decision to issue the CASA is even more unintelligible.

[109] Next, Rotor Maxx argued that the Minister's delegates inappropriately alleged that they certified parts as "new". Rotor Maxx argues that this is not possible since the certification of new parts is reserved for OEMs and Rotor Maxx has never had this authority. Transport Canada did not present evidence to indicate that Rotor Maxx represented itself as an OEM, or used the OEM process for certifying parts as new. In fact, the evidence indicates that Transport Canada knew Rotor Maxx did not certify the parts as new. In particular, on the Authorization Release Certificate form the box for parts manufactured in conformity (13 A) is crossed off and the box for used parts (14 A) is utilized. Since this Authorization Release Certificate form is dated June 11, 2013, the evidence is also that Transport Canada knew Rotor Maxx did not certify the parts as new well before receiving Rotor Maxx's letter.

[110] Yet despite this knowledge, the CASA does say that: "This advisory deals with parts and components certified as **new**, overhauled, or repaired by Rotor Maxx Support Ltd. Approved Maintenance Organization (AMO) # 86-06 between June 15, 2011 and April 22, 2014" (emphasis added). Again, Rotor Maxx's letter pointed to this error but the error was not changed. Providing this error of fact to the industry could cause economic harm and it was not reasonable

for Transport Canada to use the term when they had no evidence to support it, and even further unreasonable to do so after Rotor Maxx had brought the error to their attention.

[111] I find that the decision was unreasonable as all of the criteria to issue a CASA must be met for the Minister to come to a reasonable decision. Because I have found the decision is unreasonable and procedurally unfair on other points so it is unnecessary to comment on the further errors argued by Rotor Maxx. The application is granted.

#### IX. Remedy

[112] The remedies sought by Rotor Maxx include the following:

- This Court quash the CASA;
- An order for the Respondent to remove the CASA and notify all recipients about its removal from the website for 12 a month period;
- For this Court to issue a declaration that Rotor Maxx complied with the CARs recertification procedure;
- A writ of *mandamus* to approve the CAR 571 recertification procedures, or in the alternative, a declaration that Rotor Maxx is exempt, always has been exempt, and is entitled to use its own procedures.

[113] Transport Canada argued against the remedies sought by Rotor Maxx as not being appropriate in this judicial review other than the quashing of the decision if Rotor Maxx was successful.

[114] I am not prepared to grant the remedies sought by Rotor Maxx and will order the CASA quashed and to have it removed from any published form.

X. Costs

[115] Several proceedings before this judicial review ordered costs. Costs were awarded in regards to an injunction application heard by Justice Shore over three days in April 2015, and included 4 days of cross-examination in Victoria. Justice Shore dismissed the motion for an interlocutory injunction with costs to the Respondent. On March 19, 2015, Justice St-Louis ordered costs in the cause. As well, at the conclusion of a one-half-day motion in December 2015 in regards to rule 317 of the *Federal Courts Rules*, SOR/98-106, Prothonotary Lafrenière ordered additional documents and costs of \$2,000.00 and disbursements of \$500.00 payable in the cause to Rotor Maxx.

[116] Rotor Maxx argued for enhanced costs as they have suffered damages within the industry because of the CASA. If I award lump sum costs, Rotor Maxx asked the lump sum to be elevated over Column 3 of Tariff B. Their reasoning is that this matter has taken a long time and exceeded the timeline set by a case manager. Rotor Maxx further suggested that a lump sum of \$425,000.00 (25% less than the actual bill) would be fair and reasonable.

[117] Transport Canada's position is that costs should be from Column 3. Although two counsels were used on occasion they claimed only for one, and that their draft bill came to \$74,353.70 including disbursements. If Transport Canada is unsuccessful, then they submitted it must be remembered that the Minister did not issue the CASA for an improper purpose and the

delay was due to a change of counsel as well as the logistics of holding a cross examination in a number of cities. Transport Canada also felt that there was more cooperation between the parties, and that the relationship had never risen to a caustic disrespectful level. The Respondent rounded out the costs and seeks \$75,000 including disbursements.

[118] This matter was unnecessarily complicated and lengthy. The record is 20 volumes long and contains over 9,000 pages. Cross examination on the affidavits lasted 6 days in Victoria, 1 day in Vancouver, and 2 days in Calgary. Several other motions were brought over a long period of time. The cause could be due to the remedy sought by Rotor Maxx (a significant amount of evidence was brought since they asked that I make the decision instead of sending it back for redetermination). In addition, the matter is complex because of the affiant's different geographical locations which necessitated counsel to travel.

[119] I will award costs in lump sum amount of \$100,000.00 plus disbursements not to exceed \$10,000.00 to Rotor Maxx. This amount is inclusive of the interim motions that did not already award lump sum costs before this judicial review. In regards to the motion where costs were awarded to the Respondent, these costs can be assessed by an assessment officer or agreed to by the parties and then setoff. Costs are to be payable forthwith.

**JUDGMENT in T-444-15**

**THIS COURT'S JUDGMENT is that:**

1. The judicial review is granted and the CASA is quashed;
2. Costs are awarded to Rotor Maxx in the lump sum of \$100,000.00 plus disbursements not to exceed \$10,000.00 to be paid forthwith by the Respondent.

"Glennys L. McVeigh"

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Judge



## APPENDIX A

### *Glossary of Acronyms*

AMO – Approved Maintenance Organization  
AMP – Administrative Monetary Penalty  
CAD – Canadian Aviation Document  
CAIRS – Civil Aviation Issues Reporting System  
CAP – Corrective Action Plan  
CAR – Canadian Aviation Regulations  
CASA – Civil Aviation Safety Alert  
CMM – Component Maintenance Manual  
DN – Detection Notice  
EASA – European Aviation Safety Agency  
ICA – Instructions for Continued Airworthiness  
KAP – Known Authentic Part  
MPM – Maintenance Policy Manual  
MPL 36 – Maintenance Policy Letter #36  
NDT – Non-destructive Testing  
NOS – Notice of Suspension  
OED – Original Engineering Drawings  
OEM – Original Equipment Manufacturer  
PI – Process Inspection  
PRM – Person Responsible for Maintenance  
PVI – Program Validation Inspection  
QAM – Quality Assurance Manager  
RM – Rotor Maxx  
SDR – Service Difficulty Report  
TC – Transport Canada  
TCCA – Transport Canada Civil Aviation  
WO – Work Order

## APPENDIX B

### *Timeline of Events*

February 27, 2011—First MPM. (CAN 0249)

September 25, 2012 – Fry resigns as QAM of RM. (CAN539)

October 3, 2012 – Email from Godsell to Holme discussing concerns over RM’s handling of undocumented parts. (CAN534)

November 7-8, 2012 – PI of RM by Godsell and Williams. (CAN539)

February 14, 2013—Corrective Action Form sent from Godsell to Brown. (CAN731)

February 21, 2013—RM replies to TCCA challenging the PI. (CAN751; 1103)

April 25, 2013 – Holme first refers to RM certifying “bogus parts.” (CAN808)

April 26, 2013 – Godsell writes a letter to MacWilliam refusing the PI challenge. (CAN818)

May 14, 2013 – Email from Labrecque to Nehera about undocumented parts exemption. (CAN840)

May 17, 2013 – Email from Phipps to Labrecque stating that criticality of parts is not a regulatory requirement. (CAN857)

May 17, 2013—Email from Phipps to Nehera stating ICAs may be sufficient to recertify, and TCCA needs to update CAR571 and MPL 36 but does not have the resources. (CAN859)

May 17, 2013—Email from Godsell ignoring Phipps and discussing criticality of parts. (CAN861)

May 22, 2013 –Nehera’s handwritten notes saying that “Appendix H is worded in general terms to include a range of processes for evaluation. It is not Perscriptive [sic].” (CAN868)

May 29, 2013 – RM’s first CAP. (CAN875-876)

June 20, 2013 – First CAP rejection (CAN904-905)

June 27, 2013 – Godsell demands that parts conform to “original design standard.” (CAN912)

July 10, 2013 – Revised (Second) CAP submitted. (CAN939)

Jul 18, 2013 – Email from MacWilliam to Godsell about the new recertification documents for 3 impugned parts as well as a “proof of conformance” package compiled by R.J. Waldron & Company (1987). (CAN929-930)

July 22, 2013 – Second CAP rejection in which Godsell demands list of all parts due to CAR103.02(2) and CAR573.15. (CAN939)

August 13, 2013 – Meeting between RM and TC. (CAN968)

August 20, 2013 – RM hires DTI to help with their third CAP. (CAN980)

August 22, 2013 – Email from Holme in which he admits “[t]he physical list would not normally be required as part of a CAP” and “explain [the list] is now a separate request from the CAP” (CAN991;996)

August 22, 2013—Email from Godsell in which he admits “[t]he CAP now is almost irrelevant.” (CAN996)

August 22, 2013—Emails from Holme and Godsell agreeing that an SDR and DN should be submitted. (CAN996)

August 23, 2013 – Email from Holme to MacWilliam stating “[the list] is not directly related to the CAP.” (CAN1002)

August 26, 2013 – Formal letter from Godsell to Brown requesting the list. (CAN1006)

August 29, 2013 – Godsell visited RM and asked for evidence of list being made. Copies taken (CAN1017)

September 12, 2013 – RM submits a third CAP. (CAN1075)

October 7-11, 2013 – PVI of RM’s EASA program. (CAN1076)

October 30, 2013 – Email from Nehera alleging RM is certifying parts as “new.” (CAN1061)

October 30, 2013- Email from Phipps saying “this is not an undocumented parts issue but rather an AMO who is exceeding their AMO capability and inappropriately certifying parts.” (CAN1061)

October 31, 2013 – Draft NOS by Holme. (CAN1067)

November 8, 2013 – TC rejects RM’s third CAP due to their failure to provide a list and failure to identify “short term actions for components known to be in service.” TC also advises RM that they are considering an NOS. (CAN1075)

November 8, 2013 – TC demands EASA CAP. (CAN1076)

November 21, 2013 – Handwritten notes of Nehera made in regards to a conference call between RM, DTI and TCCA. “Andrew” asks: “Won’t hold it against us if we don’t provide list?” In response ‘M.H.’ says: “No. (that’s correct). If we go NOS, list will be req’t to terminate it, so you’ll need to provide eventually.” (CAN1091)

Nov 22, 2013 – Email from Trainor to Phipps explaining three reasons why issuing an NOS would be wrong (CAN1636)

December 2, 2013 – Email from Bellemare stating SUR-001 process must have been followed to justify certificate action. In addition, RM should establish the deviation from the Minister’s confidence rate to justify “public interest.” (CAN1094)

December 24, 2013 – First EASA CAP rejected. (CAN1108)

January 13, 2014 – Second EASA CAP submitted. (CAN1155)

January 20, 2014 – Second EASA CAP rejected. RM is warned that an NOS is being considered. (CAN1155)

January 22, 2014 – Email from Trainor to Bellemare:

[T]he burden of showing that the parts are below standard was not met by the [PVI or PI] findings. While I don’t agree with how the company made the leap of faith to conclude that the parts processed were genuine, I cannot see where the company has broken a specific regulation.

I conclude that although the activity may questionable [sic] from a suspect parts perspective the process and certification of the parts followed the current Appendix H and regulatory requirements. (CAN1172-73)

January 24, 2014 – Email from Bellemare recommending no certificate action under s. 7.1(1) of the Act. In the email Bellemare states: “a NoS issued under these circumstance [sic] could not be legally supportable.” Bellemare then recommends two actions: 1) Inform RM of the Minister’s intention to cancel their Appendix H process; and 2) Following the decision to remove their Appendix H process, send RM a letter containing the Minister’s final decision and advise RM about the right to judicial review in the Federal Court. (CAN1171).

January 24, 2014 – Email from Trainor to Phipps saying “My view is that if we tell a company in Pacific region that they cannot use this process we must tell all others the same thing.” (CAN1682)

January 27, 2014 – Email from Holme stating that two letters will be sent to RM. The first, cancelling their Appendix H process; the second, demanding a list. (CAN1176)

January 27, 2014—Email from Bellemare to Holme advising cancellation of Appendix H is a “TWO STEP process.” (CAN1177)

January 31, 2014 – Email from Bellemare to Holme: “I would like to point out that all AMOs that have appendix H approval should be treated equally, and should be sent a similar letter. Also, in order to demonstrate good faith on the part of the Minister, it would be best if we would ensure that we may review and approve any further documents sent by Rotor Maxx Ltd. in the best possible time, when applicable.” (CAN1181)

Feb 24, 2014 – RM submits third EASA CAP. (CAN1223)

Mar 5, 2014 – RM’s third EASA CAP is accepted. (CAN1223)

Apr 4, 2014 – Email from Glavind recommending RM’s MPM is amended through a CAP to include MPL 36 parts criticality and that non-critical parts can be accepted due to lower safety risk. He argues the region can take certificate action for breach of CAR571.10(1) and says “just because it is an engine part or flight control does not mean that it will cause a catastrophic failure.” (CAN1245)

April 4, 2014 – Email from Godsell in reply to Glavind, advocating for a NOS which demands a list of parts. (CAN1246)

April 11, 2014 – Email from Nehera to Godsell advising against issuing an NOS without Enforcement (CAN1253).

April 22, 2014 – TC sends a letter to RM demanding they provide records and documents of any parts released under their process, and an amended MPM. (CAN1262)

April 29, 2014 – RM’s counsel responds to TC’s letter stating their opinion. (CAN1278)

May 6, 2014 – Email from Chiatto to Godsell stating the regulatory investigation into RM is closed. (CAN1304)

May 20, 2014 – Email from Phipps to Nehera advising that subcomponent parts require OEM or engineering data. (CAN1310)

July 14, 2014 – Nehera sends a letter to RM’s counsel demanding the parts lists by August 11, 2014. (CAN1366)

July 23, 2014 – TCCA held a teleconference about their next steps in the RM matter. The notes of the meeting state that a Suspected Unapproved Part Report was unsuitable “[g]iven that we have no records for the basis of an investigation.” Instead, TC decided to pursue a CASA. (CAN1386)

August 21, 2014 – Email from Nehera to RM’s counsel stating that TC is considering a CASA and advance notice will be given. (CAN1493)

September 5, 2014 – Email from Godsell to Phipps stating: “The seven tasks were chosen randomly from approximately 340 tasks contained in 15 work orders that the company provided to us and that were used to evaluate undocumented parts. To date these are the only tasks that we have reviewed. Our intention is to review them all.” (CAN 1497)

September 24, 2014 – Email from Phipps to Godsell confirming that an AMO must have design data to recertify a part and that an ICA is not design data and cannot be used. Phipps suggests that RM should have sent parts back to the OEM for recertification. He further advised a CASA was being translated and will be sent to Pacific Region for comments before it is issued. (CAN 1497)

November 19, 2014 – Nehera sends the draft CASA to RM. RM’s comments requested by December 3, 2014. (CAN1542)

November 24, 2014 – Godsell sends a letter to RM stating “[The RM Appendix H process] is an excellent template for performing and documenting the recertification of undocumented parts. However, for the recertification process to be acceptable the checklist must reflect the intent of

both” the Appendix H process and MPL 36. “All aeronautical parts or components require some engineering design data.” ICAs “may only be used to perform maintenance on an assembly or complete product.” (CAN1557)

November 26, 2014 – RM provides Nehera with their CASA comments. (CAN1566-67)

December 3, 2014 – Email from Godsell to Nehera providing responses to RM’s concerns (CAN1575-76)

December 22, 2014 – TC grants RM an additional aircraft general rating despite the Minister’s accusations that they presented a risk to safety. (CAN1623)

January 15, 2015 – The CASA is finalized. (CAN1631)

February 24, 2015 – Nehera informs RM that TC will issue the CASA on March 17, 2105. (CAN1632)

March 24, 2015 – RM files notice of application in Federal Court for judicial review of the CASA.

## APPENDIX C

### *Individuals and their Respective Professional Capacities*

Adams, Toke—Transport Canada, Pacific Region Regional Manager, Enforcement

Bellemare, Frédéric – Transport Canada Civil Aviation Safety Inspector, Standards

Brown, Jeremy – Rotor Maxx President, COO

Chiatto, Roberto – Inspector Civil Aviation Enforcement

Falkenburg, Grant – Rotor Maxx Engine Shop Manager

Fry, Chris – Rotor Maxx Quality Assurance Manager

Glavind, John – Program Manager, Transport Canada, Operational Airworthiness

Godsell, Michael – Transport Canada Civil Aviation Safety Inspector, Airworthiness

Holme, Mitchell – Superintendent, Transport Canada Civil Aviation Safety Inspector, Airworthiness

Labrecque, Keith – Regional Manager, Transport Canada Civil Aviation, Standards Coordination

MacWilliam, Matthew – Rotor Maxx Quality Assurance Manager

Mattieu, Jean-Francois – Chief, Transport Canada, Aviation Enforcement

Nehera, John – Associate Director Operations , Transport Canada Pacific Region

Phipps, Jeff – Chief, Operational Airworthiness, Standards Branch, Transport Canada Civil Aviation

Taboada, Dennis – DTI Training Consortium, International

Trainor, Mark – Program Manager, Approved Organization Standards, Airworthiness

Williams, Mary Lou – Transport Canada Civil Aviation Safety Inspector, Airworthiness

Wiggins, Mike – Rotor Maxx CEO

\*DTI Training Consortium, International – hired by Rotor Maxx as a trusted independent third party.

\*R.J. Waldron & Company (1987) Ltd- used for independent analysis of impugned parts.

## APPENDIX D

### *Standard 571 Appendix H of the Canadian Aviation Regulations “Process to Evaluate Undocumented Aircraft Parts”*

#### **Part V- Standard 571- Appendix H- Process to Evaluate Undocumented Aircraft Parts**

The following numbers correspond to the sequence of steps illustrated in the flow chart: (flowchart attached as Appendix E)

1. Parts at receiving: Retain all historical documents, tags, invoices, and packing slips for evaluation.
2. Part Identification: Verify that the part has certification or sufficient documentation, or both as applicable, to ascertain that it is a genuine part (i.e. nomenclature, part number, serial number, time in service) and that the part corresponds to that documentation. If the part appears to be a used part, verify that the identity of the aircraft from which the part was removed is documented. Verify that the technical records indicate that the applicable Airworthiness Directives and equivalent applicable directives issued by a foreign civil aviation authority have been accomplished.
3. Stores: Complete incoming stock procedures and place in stores by following the procedures described in the company Maintenance Policy Manual (MPM).
4. Exceptions: Section 571.09 of the CARs limits the installation of used life limited parts to those for which a complete technical history is available. Therefore, parts of the following kinds that are considered undocumented at step 2, are not be further evaluated under this appendix:
  - (a) life-limited parts that are subject to limits on flying hours, landings, operating cycles or calendar time in service, or combinations thereof;
  - (b) parts that are required to be rejected in accordance with the instructions for continued airworthiness following an abnormal occurrence; or
  - (c) parts that are eligible for use in multiple applications with different operational limitations, or different limits on the time in service, which if exceeded would require rejection of the part.
5. Part considered authentic: Consider the following factors when evaluating the authenticity of the part:

(a) the origin of the part (i.e. was the part received from a reliable source?);

(b) documentation such as packing slip, manufacturer's identification tag, identity of component from which the part was removed; and

(c) part nomenclature, part number, serial number, manufacturer's identification marks or stamps found on the part.

6. Documentation: Record and retain evidence of all tasks accomplished throughout the process of ascertaining the authenticity of the part. Detail each step of the process up to and including certification.

7. Evaluation: Using all available information, conduct an inspection of the part in accordance with the instructions for continued airworthiness or available type design data, or with both as applicable, for the part. It may be necessary to evaluate the part by comparison with a known authentic part. The evaluation process may require the use of hardness tests to determine heat treatment of the material. Procedures may be required to determine various material processes that may have been conducted on the material such as shot peening. Test all primary structural parts to determine that they are of the same material and in the same material condition as the type design product, either by comparison with the type design data (e.g. drawings) or by conducting comparison tests with a known authentic part.

8. Fit form and function: Check each part for physical interface with integral parts (e.g. shape, size, dimensions, mass and other parameters uniquely characterizing the part) and check the actions that the part is to perform. Ensure that all dimensions are within published wear limits. Where wear limits are not published, ensure that the dimensions do not exceed known limits for new parts.

9. Conformity: Verify that the part conforms to all applicable characteristics.

10. Restoration: Inspect and test parts and assemblies to all methods and practices published for such parts.

11. Acceptability: The part is acceptable for certification when it meets all the requirements of the type design or instructions for continued airworthiness and approved procedures including inspection, overhaul and testing. Ensure that all Airworthiness



Directives and equivalent directives issued by a foreign civil aviation authority applicable to the part are complied with.

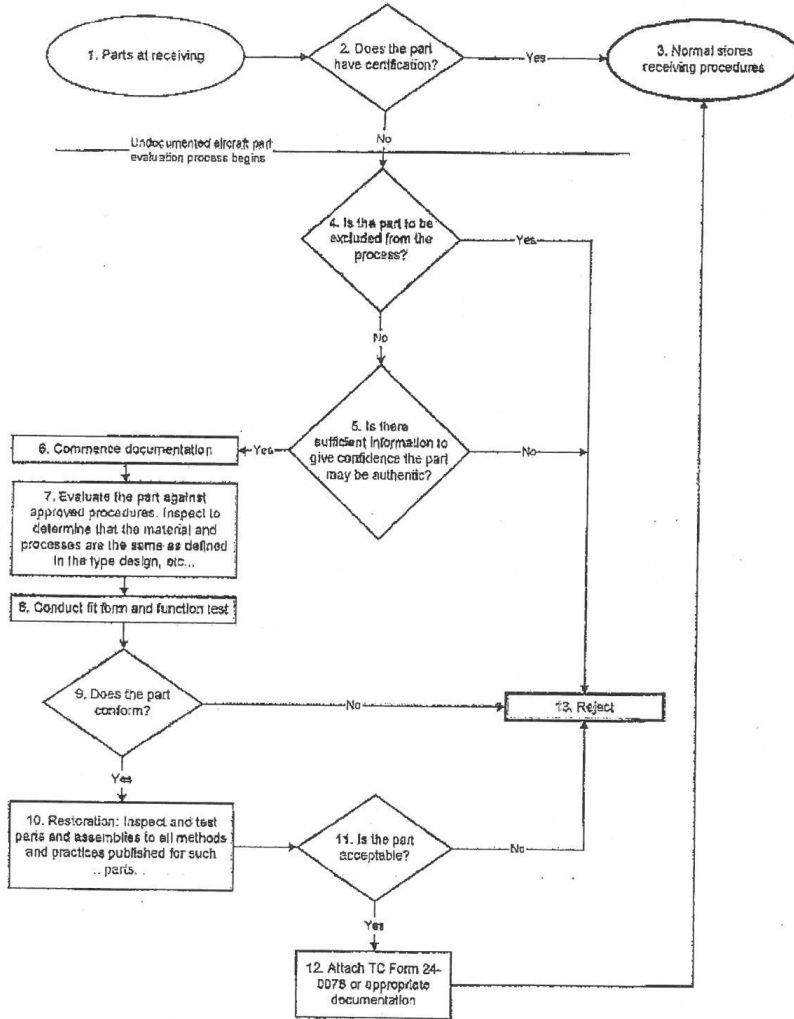
12. Certification and supporting documents: If the part has been found acceptable under para. 11, fill out and sign a maintenance release, meeting the requirements of section 571.10 of the CARs, and provide any other supporting documentation that may be required such as calibration records and test results, and ensure the certification documents accompany the part.

13. Reject: Ensure that any part that has reached its life limit is rendered unusable, or that it is identified as unairworthy and kept segregated from airworthy parts, in accordance with section 571.09 of the CARs.

# APPENDIX E

## Appendix H Flowchart

Part V - Standard 571 Appendix H - Process to Evaluate Undocumented Aircraft Parts - Flow Chart



(amended 2007/12/30; previous version)

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## APPENDIX F

### Maintenance and Manufacturing Policy Letter 36

#### AIRCRAFT MAINTENANCE & MANUFACTURING POLICY LETTER

Subject:	Number:	MPL 36	
Approved Maintenance Organizations for Re-certification of Parts	Revision No:	1	
	Number of Pages:	7	
File No:	AARP-5009-0-36	Issue Date:	February 2, 2006

#### 1. PURPOSE

- 1.1 The purpose of this letter is to clarify the intent of extending privileges to Approved Maintenance Organizations (AMOs) to re-certify parts and establish a process for controlling these approvals.

#### 2. BACKGROUND

- 2.1 On March 1, 2002 changes to Canadian Aviation Regulation 573 and associated standards, specifically 571 Appendix H, introduced a new means of documenting and certifying parts of varying provenance and criticality. The changes associated with the revision of the parts approval process enables the use, after appropriate evaluation, of parts for which the certification or known history no longer conforms to traditional standards. These rules are the result of the rule making process utilizing the Canadian Aviation Regulatory Advisory Committee (CARAC) and the diligent work in the Aircraft Maintenance and Manufacturing Technical Committee and Parts Working Group. The changes were put forward 3-5 years ago and have already been implemented with some AMO's.
- 2.2 A series of presentations by headquarters personnel was conducted for Aircraft Maintenance and Manufacturing Inspectors across most of the Transport Canada Centre (TCC) to present the rule changes and introduce the concept of re-certification privileges for qualified AMOs. Presentations have also been offered at AME symposiums across Canada. As a result of those sessions, some concerns were raised over the nature of an AMO that would qualify for approval to exercise this process, and the standardization of approvals.
- 2.3 It should be clearly understood that an AMO who wishes to re-certify undocumented parts is simply wishing to expand their capability as an AMO and this type of capability should not be considered an approval on its own merit, but more as a process under an existing AMO approval. As a result, a Notice of Proposed Amendment (NPA) has been developed to introduce changes to STD 573.02 (11) to remove the reference to having this capability identified in the limitations set out in the AMO certificate. This capability is to be described and controlled in the limitations section of the AMO's Maintenance Policy Manual (MPM) and is to be directly linked to existing capabilities (ratings) held by the AMO. Additional changes to 573.02 (11) have been added to include the requirement for an AMO to identify which types of aeronautical products it is capable of evaluating in its MPM.
- 2.4 An additional NPA has been drafted to further clarify the requirement for AMO's to establish applicable procedures based on the criticality of the aeronautical products being re-certified and the ability to correctly identify the part through any part markings. The applicable procedures will vary depending on the types of products they intend to re-certify and the proposed methods to be used to evaluate the part.
- 2.5 The Appendix H process in Std. 571 has been amended to help clarify some of the steps in the process. A new step has been added between step 5 (documentation process) and step 7 (evaluation). The new step 6 (Determine part Criticality) was added to clarify the need for an AMO to take the part criticality into consideration when developing and applying the evaluation part of this process. Critical parts would require a more detailed evaluation based on the use of design data versus a more simplified evaluation for a non-critical part, which could be evaluated based on Instructions for Continuing Airworthiness (ICA) data and/or comparison data.

- 2.6 Step 9 (Material Analysis), is a continuation of the evaluation process (Step 7), which has been expanded to help clarify the need to determine any material processes which may have been applied to a part. Some parts will need to be tested to determine material type, material condition and/or any other special processes, which may have been applied to the part.

### 3. POLICY STATEMENT

- 3.1 The intention of Transport Canada (TC) is to extend this privilege to qualified AMOs who have identified a need to re-certify undocumented parts and have demonstrated that they hold the necessary capability to evaluate the type of parts identified in their MPM revision, based on their current AMO rating's. TC does recognize that this is a process that most AMO's will want to have, but in general most AMO's will be limited to very specific types of parts and to very specific types of testing and evaluation in relation (once again) to their AMO ratings and capabilities. For example; a component AMO may only be capable to re-certify undocumented parts based on Instructions for Continued Airworthiness (ICA) data, while another AMO may be able to re-certify parts based on ICA data, design data and special processes, due to their engineering capability and existing AMO limitations. The method of applying for this privilege is through the submission of a Maintenance Policy Manual (MPM) amendment, which shall include the details with which the organization intends to administer their process.
- 3.2 It was recognized that a great deal of interpretation could be applied, as the level of evaluation would have to be balanced against the knowledge of the part history. (i.e. the less one knows about the history and genuine origin of the part, the more evaluation may be involved, and vice versa). For this reason a generic procedure was not possible. However, by applying the standards as a series of questions at each stage of a process, an inspector should be able to review a MPM to determine that each element of the standards are met. This may involve consultation with the Aircraft Certification Branch for some interpretation of the processes proposed. The planning and design aspects are crucial elements in the approval process and particular attention needs to be paid to these areas in the MPM. This is not to mean that entire procedures are to be placed in the MPM, but that the overruling policy is clearly explained and auditable. For control purposes AMO's are to identify which types of products are eligible for re-certification by their organization and that they be incorporated into the limitations section of their MPM.
- 3.3 It is expected that an inspection of an AMO's facilities may be required to verify that the capabilities exist to conduct the procedures proposed by the MPM submission. This would be conducted only after the regional inspectors have satisfied themselves the procedures in the MPM amendment are acceptable, but before further processing of the amendment is conducted at a higher level. It will be the individual inspectors who will review the material submitted and inspect the facilities to determine whether the AMO is capable of carrying out the process proposed in the MPM amendment package.
- 3.4 The region will be responsible for establishing the review procedures within the regional framework. It is recommended that each region establish a core of knowledgeable persons to act as a committee of specialists to review the first several MPM amendment packages. The regional committee will act as a reference source and standardization team to review the packages for content and ensure that all issues have been addressed prior to approval being granted to a requesting AMO. Where necessary this committee will consult with headquarters on the establishment of further guidance material.
- 3.5 For the sake of national consistency, copies of the first two packages from each region will be forwarded to headquarters contact, listed below, for a secondary review prior to approval being granted. The headquarters secondary review will be a quality assurance and standardization function to ensure the intentions of the rule changes are being met. These will be complete in the sense that an inspector has reviewed the information and satisfied him/herself that it meets the requirements, an inspection to verify the capability of the organization has been conducted, the regional committee has reviewed it for consistency in the region and it is recommended for approval. After final acceptance by headquarters, verification will be sent to the regional committee. With a recommendation from the regional committee the Principle Maintenance Inspector can approve the amended MPM package thereby approving the re-certification privileges for the qualified AMO.

- 3.6 The policy letter applies to existing organizations approved to re-certify undocumented parts in accordance with CAR Std. 571 Appendix H. This policy letter also applies to any new applicant for the issue of re-certification of undocumented parts approval.
- 3.7 The Appendix contained in this policy letter contains Notice's of Proposed Amendments to the CAR's and STD's applicable to the re-certification of undocumented parts process.

**4. EFFECTIVE DATE**

- 4.1 This policy comes into effect immediately.

**5. EXPIRY**

- 5.1 This policy expires two years from the date of release of the regulations, at such time as the rules themselves change or this MPL is superceded.

**6. HQ CONTACT**

- 6.1 The responsible officer indicated below may be contacted for information regarding this MPL

Jeffrey Phipps  
Chief, Standards & Procedures AARPE  
Aircraft Maintenance & Manufacturing  
E-mail: [phippsj@tc.gc.ca](mailto:phippsj@tc.gc.ca)  
Phone: (613) 952-4386  
Facsimile: (613) 952-3298

D.B. Sherritt  
Director,  
Aircraft Maintenance and Manufacturin

## Appendix to MPL 36

### Approved Maintenance Organizations for Re-certification of Parts

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#### Interpretation

- (a) "*undocumented part*" means a part lacking sufficient certification or history to make it eligible for installation on an aircraft without submitting it to a recertification process.

#### Approved Maintenance Organizations for Re-certification of Parts

Condition .01 (1) An AMO may evaluate undocumented parts of the kinds associated with ratings held, provided that:

- (a) the AMO identifies what aeronautical products it is capable of evaluating in its MPM; and
- (b) the AMO establishes applicable procedures, in its MPM, to perform the process outlined in Standard 571, Appendix H; taking into consideration the criticality and origin of the part and the ability to correctly identify the part through any markings.
- (c) the AMO obtains approval for the procedures required in paragraph (b) in accordance with section 573.10 of the CARs.

#### Standard 571 Appendix H - Process to Evaluate Undocumented Aircraft Parts

1. **Parts at receiving:** Retain all historical documents, tags, invoices, and packing slips for evaluation.
2. **Part Identification:** Verify that the part has certification or sufficient documentation, or both as applicable, to ascertain that it is a genuine part (i.e. nomenclature, part number, serial number, time in service) and that the part corresponds to that documentation. If the part appears to be a used part, verify that the identity of the aircraft from which the part was removed is documented. Verify that the technical records indicate that the applicable Airworthiness Directives and equivalent applicable directives issued by a foreign civil aviation authority have been accomplished.
3. **Stores:** Complete incoming stock procedures and place in stores by following the procedures described in the company Maintenance Policy Manual (MPM).
4. **Exceptions:** Section 571.09 of the CARs limits the installation of used life limited parts to those for which the technical history is available. Therefore, parts of the following kinds that are considered undocumented at step 2, are not be further evaluated under this appendix:
  - (a) life-limited parts that are subject to limits on flying hours, landings, operating cycles or calendar time in service, or combinations thereof;
  - (b) parts that are required to be rejected in accordance with the instructions for continued airworthiness following an abnormal occurrence; or
  - (c) parts that are eligible for use in multiple applications with different operational limitations, or different limits on the time in service, which if exceeded would require rejection of the part.

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**Approved Maintenance organizations for Re-certification of Parts**


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**5. Documentation and evaluation:** Record and retain evidence of all tasks accomplished throughout the process of ascertaining the conformity of the part. Detail each step of the process up to and including the determination of conformity.

**6. Determine Part Criticality:** An evaluation of the part must be made to determine the part criticality. For example:

(a) critical parts such as engine components, power train drive components, flight controls, and primary structural parts whose failure or malfunction could cause a catastrophic failure; or

(b) non-critical parts are those that typically can be identified through their part markings whose failure or malfunction would not cause a catastrophic failure, but instead a possible loss of system redundancy.

**7. Evaluation:** The intent of the evaluation process is to determine the eligibility of the part through the identification of the part and the ability to determine its attributes. Can the origin of the part be confirmed (i.e. was the part received from an aircraft, a maintenance organization, manufacturer, or other source? Is there sufficient documentation to ascertain that it is the proper part such as packing slip, manufacturer's identification tag, identity of component from which the part was removed. Can the part nomenclature, part number, serial number, manufacturer's identification marks or stamps found on the part be confirmed? The more information that is known about a part will enable the evaluator to confirm whether a part conforms to its type design or not.

Depending on the criticality of the part, the type of data used during the evaluation process will differ. For example:

7 (a) Non-critical parts will be evaluated in accordance with applicable ICAs or equivalency data. Equivalency data is determined by a process of material and dimensional analysis, which can then be used with known authentic parts to determine eligibility, which essentially becomes a fit, form and function test.

7 (b) Critical parts will require a higher level of evaluation based on design data, OEM drawings, and other associated specifications, in order to determine the attributes of the part. For primary structure the attributes of the part must be identified and as a result the organization will be required to obtain the manufacturers data as applicable.

Note: attributes are the characteristics, qualities or properties of the part as identified by the OEM, such as material type, material strength, and special processes used during the manufacturing process.

Note: part conformity is based on the data associated with the appliance type certificate, TSO, or aircraft type certificate, as applicable.

**8. Is there sufficient data to confirm conformity:** is there sufficient information obtained during the evaluation of the part in the previous step, using the appropriate data based on part criticality to confirm conformity. Parts, which are lacking sufficient information, may require additional evaluation through material analysis to determine the attributes of the part. Parts that can be correctly identified through their markings etc. and have sufficient data available to evaluate the characteristics, qualities or properties of the part may not require material analysis to determine conformity.

**9. Material Analysis Processes:** When a part is no longer in production and type design data is no longer available, and/or the source of the part is unknown, material analysis maybe necessary in order to determine the attributes of the part. Typically material analysis will determine the material type, material strength, and any special processes applied during manufacturing, which are considered to be part of the design approval process.

Note: When the type design data is no longer available, the data resulting from the material processes could be used to determine part eligibility for a particular design.

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**Approved Maintenance Organizations for Re-certification of Parts**

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In comparison, when the source of the part is unknown the material process data could be used in comparison to the OEM design data in order to determine eligibility of the part.

**10. Conformity:** Verify that the part conforms to all applicable characteristics published in the OEM drawings or other associated specifications, ICAs, or equivalency data, as necessary. If the part conforms it is now considered to be eligible for installation only once the airworthiness of the part has been determined in step 11.

**11. Testing and Repair:** The objectify of this step is to determine the Airworthiness of the part by the processes identified in the applicable ICAs, which will confirm the serviceability of the item. These processes could be as simple as a bench check, dimensional inspection, visual inspection, and/or, as complex as an overhaul or major repair.

Note: Parts that have not been evaluated in step 7 cannot be certified using a test and/or repair procedure in step 11. Only once eligibility has been determined through evaluation can the part be subjected to step 11 using published ICA data to complete the re-certification process. All repairs must be performed in accordance with the appropriate specified or approved data as necessary.

**12. Acceptability:** The part is acceptable for certification when it meets all the requirements of the type design or instructions for continued airworthiness and approved procedures including inspection, overhaul and testing. Ensure that all Airworthiness Directives and equivalent directives issued by a foreign civil aviation authority applicable to the part are complied with.

**13. Certification and supporting documents:** If the part has been found acceptable under paragraph 12, fill out and sign a maintenance release, meeting the requirements of section 571.10 of the CAR's, and provide any other supporting documentation that may be required such as calibration records and test results, and ensure the certification documents accompany the part. Where a part has been accepted pursuant to Appendix H of this standard, the certification statement shall include the following words.

"This part has been determined to conform to the approved type design, or to be acceptable under section 571.13 of the CAR's"

Note: An AMO will only be able to determine part eligibility and airworthiness in accordance with their AMO capabilities, which are based on their applicable AMO rating(s) and limitation(s).

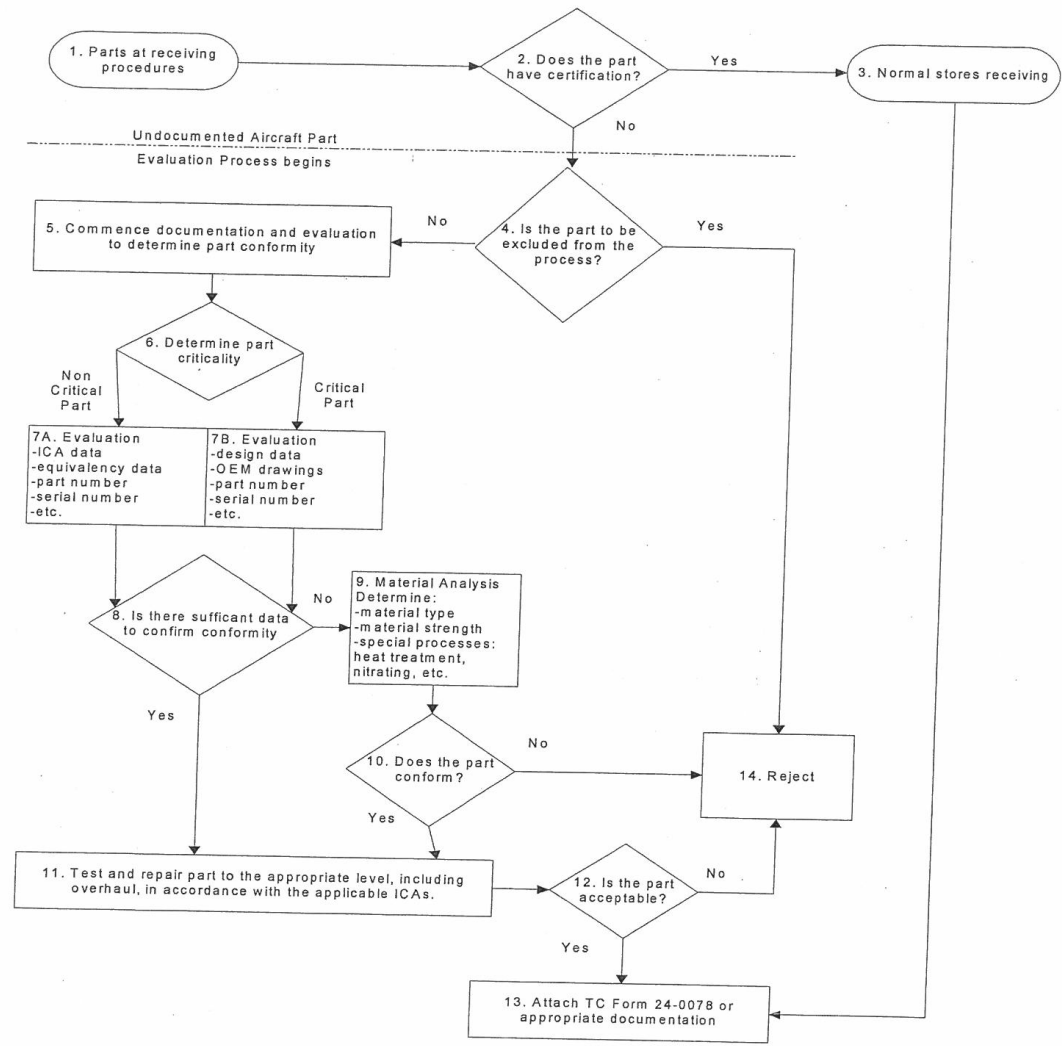
**14. Reject:** Ensure that any part that has reached its life limit or that is identified as ineligible (step 10), or unairworthy (step 12), is rendered unusable or kept segregated from airworthy parts, in accordance with section 571.09 of the CARs.

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Approved Maintenance organizations for Re-certification of Parts

Flow Chart



## APPENDIX G

### *Canadian Aviation Regulations Standard 571 section 573.13 "Installation of Parts, General"*

571.13 (1) Subject to sections 571.07 to 571.09, no person shall install a part on an aeronautical product unless the part is

(a) inspected and its accompanying documentation verified in accordance with a procedure that ensures that the part conforms to its type design, as is indicated by the maintenance release; and

(b) installed in accordance with the requirements of section 571.13 of the *Airworthiness Manual*.

## APPENDIX H

### Civil Aviation Safety Alert Issued against Rotor Maxx



Transport Canada / Transports Canada

Document No. / Document n° : CASA 2014-06

Issue No. / Numéro d'édition : 01

Date : 2015-01-15

Page : 1 of/de 3

### CIVIL AVIATION SAFETY ALERT

### ALERTE A LA SECURITE DE L'AVIATION CIVILE

#### ATTENTION:

AIRCRAFT OWNERS, OPERATORS,  
MAINTENANCE ORGANIZATIONS, PARTS  
SUPPLIERS, PARTS DISTRIBUTORS, AND  
RELATED PERSONNEL

#### À L'ATTENTION DE :

PROPRIÉTAIRES ET EXPLOITANTS D'AÉRONEFS,  
ORGANISMES DE MAINTENANCE,  
FOURNISSEURS ET DISTRIBUTEURS DE PIÈCES  
ET PERSONNEL CONNEXE

#### AIRCRAFT COMPONENTS AND PARTS SUPPLIED BY ROTOR MAXX SUPPORT LTD.

#### COMPOSANTES ET PIÈCES D'AÉRONEFS FOURNIES PAR ROTOR MAXX SUPPORT LTD.

#### PURPOSE:

This advisory deals with parts and components certified as new, overhauled, or repaired by Rotor Maxx Support Ltd. Approved Maintenance Organization (AMO) # 86-06 ("Rotor Maxx") between June 15, 2011 and April 22, 2014.

#### OBJET :

Le présent avis traite des pièces et des composantes certifiées comme étant neuves, remises à neuf ou réparées par Rotor Maxx Support Ltd. Organisme de Maintenance Agréé (OMA) # 86-06 (« Rotor Maxx »), entre le 15 juin 2011 et le 22 avril 2014.

#### BACKGROUND:

The Canadian Aviation Regulations (CARs) require that parts conform to their type design to be eligible for installation on civil aviation aeronautical products. It also must be determined that new parts were manufactured by a manufacturer certificate holder approved under CAR 561, or equivalent and that they are airworthy. This is normally accomplished by the issuance of a statement of conformity by the manufacturer that accompanies the part.

#### CONTEXTE :

Le *Règlement de l'aviation canadien* (RAC) exige que les pièces doivent être conformes à leur définition de type pour être admissibles à être installés sur un produit aéronautique de l'aviation civile. Il doit également être déterminée que les pièces ont été fabriquées par un titulaire de certificat de constructeur agréé en vertu du RAC 561, ou un équivalent et qu'elles sont en état de navigabilité. Pour satisfaire à cette exigence, toute pièce doit être accompagnée d'une déclaration de conformité fournie par le constructeur.

When used parts are maintained and certified, the previous installation of the part is used as evidence that the part met the requirements for a new part at some previous time. Therefore, only the airworthiness of the used parts needs to be ascertained. The parts are assumed to have been manufactured by an organization authorized to do so and to have met their type design because of their previous installation. These assumptions are based on the fact that the only way a part could have been installed originally was in accordance with the new part requirements.

Lorsque les pièces usagées sont entretenues et certifiées, l'installation précédente de la pièce sert de preuve qu'elle a satisfaite aux exigences applicables à une pièce neuve à un moment donné. Par conséquent, seule la navigabilité des pièces usagées doit être vérifiée. En effet, par leur installation précédente, les pièces en question sont présumées avoir été fabriquées par une organisation autorisée à le faire et être conforme à leur définition de type. Ces hypothèses sont fondées sur le fait que la seule façon pour une partie aurait été installé à l'origine était en conformité avec les exigences reliées à une nouvelle pièce.

RDIMS Document number /  
Numéro du document du SGDDI :

File Classification Number /  
Numéro du document de classification :

Z 5000-35

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Canada

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AMO approved manuals may contain procedures to assess and certify parts that no longer have evidence of certification from a manufacturer or that there is no traceability to a previous installation. AMOs use a variety of resources and data to determine that such a part was indeed manufactured by an organization holding a manufacturer certificate in accordance with CAR 561. Once a determination had been made that the part conforms to its design data, the ICAs (Instructions for Continued Airworthiness) are to be used to ensure the part conforms from a wear perspective as the part was undocumented. Once these activities are complete, the maintenance organization can certify the part.

Rotor Maxx Support Ltd., AMO # 86-06 certified undocumented parts during the period between June 15, 2011 and April 22, 2014. Transport Canada Civil Aviation (TCCA) has found that Rotor Maxx Support Ltd. did not consistently determine that the parts they were certifying for installation on components or parts that were for sale met their approved type design.

#### RECOMMENDED ACTION:

Aircraft owners, operators, maintenance organizations, parts suppliers, parts distributors, and related personnel should inspect their aircraft, aircraft records, and parts inventories for any parts certified by Rotor Maxx Support Ltd. AMO # 86-06 between June 15, 2011 and April 22, 2014. If you find any of these parts installed on aircraft, you should take appropriate action to verify the airworthiness of the parts or remove them from service. If these parts are located in an existing inventory, it is recommended that these parts be quarantined to prevent installation until a determination can be made as to their airworthiness.

Les manuels approuvés des OMA peuvent contenir des procédures pour l'évaluation et la certification de pièces pour lesquelles il n'y a plus de preuve de certification du constructeur, ou qui ne possèdent pas de traçabilité à une installation précédente. Les OMA utilisent diverses ressources et données pour vérifier qu'une pièce a effectivement été fabriquée par une organisation titulaire d'un certificat de constructeur conformément au RAC 561. Une fois qu'une décision a été prise que la pièce est conforme à ses données de conception, l'ICA (Instructions pour le maintien de la navigabilité) serait utilisé pour assurer que la pièce est conforme du point de vue de l'usure puisque la pièce n'était pas documentée. Lorsque les activités terminées, l'organisme de maintenance peut certifier la pièce.

Rotor Maxx Support Ltd., OMA # 86-06 a certifié des pièces sans documentaire au cours de la période du 15 juin 2011 au 22 avril 2014. Transports Canada, Aviation Civile (TCAC) a constaté que l'organisation Rotor Maxx Support Ltd. n'a pas vérifié systématiquement que les pièces qu'elle avait certifiées pour installation sur des composantes ou mises en vente étaient conformes à la définition de type approuvée.

#### MESURE RECOMMANDÉE :

Les propriétaires et les exploitants d'aéronefs, les organismes de maintenance, les fournisseurs de pièces et le personnel relié devraient inspecter leurs aéronefs, vérifier la documentation technique des aéronefs et leur inventaire pour des pièces ayant été certifiées par Rotor Maxx Support Ltd., OMA # 86-06 entre le 15 juin 2011 et le 22 avril 2014. Si vous découvrez qu'une de ces pièces a été installée sur un aéronef, vous devez prendre les mesures appropriées pour en vérifier l'état de navigabilité ou les retirer du service. Si ces pièces font partie d'un inventaire actuel, il est recommandé que ces pièces soient mises en quarantaine pour empêcher l'installation jusqu'à ce qu'une décision peut être prise quant à leur état de navigabilité.

**CONTACT OFFICE:**

For more information concerning this issue, contact a **Transport Canada Centre**, or contact Jeff Phipps, Chief Operational Airworthiness, Standards Branch in Ottawa, by e-mail at [jeff.phipps@tc.gc.ca](mailto:jeff.phipps@tc.gc.ca).

Any further defects or occurrences should be reported to Transport Canada via the Web Service Difficulty Reporting System (WSDRS) at:

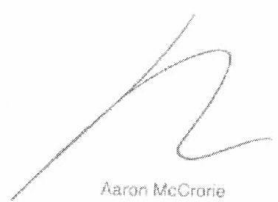
<http://www.wapps3.tc.gc.ca/Saf-Sec-Sur/2/CAWIS-SWIMN/locon-wsdrs-cs16101.asp?Lang=E>

**BUREAU RESPONSABLE :**

Pour davantage de renseignements à ce sujet, **veuillez communiquer avec un Centre de Transports Canada** ou avec Jeff Phipps, Chef, Navigabilité opérationnelle, Direction des Normes, à Ottawa, par courriel à [jeff.phipps@tc.gc.ca](mailto:jeff.phipps@tc.gc.ca).

Toute autre défectuosité ou tout autre incident devrait être rapporté par l'entremise du Système Web de rapports de difficultés en service (SWDRS) à :

<http://www.wapps3.tc.gc.ca/Saf-Sec-Sur/2/CAWIS-SWIMN/locon-wsdrs-cs16101.asp?lang=F&rand=>



Aaron McCrorie  
Director | Directeur  
STANDARDS | NORMES

<p>THE TRANSPORT CANADA CIVIL AVIATION SAFETY ALERT (CASA) IS USED TO CONVEY IMPORTANT SAFETY INFORMATION AND CONTAINS RECOMMENDED ACTION ITEMS. THE CASA STRIVES TO ASSIST THE AVIATION INDUSTRY'S EFFORTS TO PROVIDE A SERVICE WITH THE HIGHEST POSSIBLE DEGREE OF SAFETY. THE INFORMATION CONTAINED HEREIN IS OFTEN CRITICAL AND MUST BE CONVEYED TO THE APPROPRIATE OFFICE IN A TIMELY MANNER. THE CASA MAY BE CHANGED OR AMENDED SHOULD NEW INFORMATION BECOME AVAILABLE.</p>	<p>L'ALERTE À LA SÉCURITÉ DE L'AVIATION CIVILE (ASAC) DE TRANSPORTS CANADA SERT À COMMUNIQUER DES RENSEIGNEMENTS DE SÉCURITÉ IMPORTANTS ET CONTIENT DES MESURES DE SUIVI RECOMMANDÉES. UNE ASAC VISE À AIDER LE MILIEU AÉRONAUTIQUE DANS SES EFFORTS VISANT À OFFRIR UN SERVICE AYANT UN NIVEAU DE SÉCURITÉ AUSSI ÉLEVÉ QUE POSSIBLE. LES RENSEIGNEMENTS QU'ELLE CONTIENT SONT SOUVENT CRITIQUES ET DOIVENT ÊTRE TRANSMIS RAPIDEMENT PAR LE BUREAU APPROPRIÉ. L'ASAC POURRA ÊTRE MODIFIÉE OU MISE À JOUR SI DE NOUVEAUX RENSEIGNEMENTS DEVIENNENT DISPONIBLES.</p>
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## APPENDIX I

### *Section 9 of Staff Instruction SI QUA-003 Civil Aviation Document Development Procedures*

#### 9.1 General

- (1) This section applies to CASAs.
- (2) A CASA shall be used as a non-mandatory notification to convey important safety information and recommended action to the appropriate stakeholders. The information contained in a CASA is critical and shall be sent in a timely manner.
- (3) Approval of all CASAs requires signing authority from the Director of the originating office. The only two branches responsible to develop CASAs are National Aircraft Certification Branch and Standards Branch.
- (4) The published CASA may be changed or amended should new information become available.
- (5) Due to the urgency of disseminating critical safety information, the consultation process for CASAs may differ from other documents.
- (6) CASAs now replace several safety types of documents, such as Service Difficulty Alerts and Service Difficulty Advisories.

#### 9.2 Initiation of CASA

- (1) All of the following criteria are to be considered when determining if a CASA is to be used.
  - (a) Is it a critical safety issue?
  - (b) Does the information need to be disseminated urgently?
  - (c) Is there a recommended action?
  - (d) Is this the best means to address the issue?
- (2) If all of the criteria are met in paragraph (1), then a notice of intent should be communicated to the other Branch responsible for the issuance of a CASA.

If it does not meet the criteria in paragraph (1), then it should be considered as another type of document, such as an Airworthiness Directive or Advisory Circular.

### 9.3 Development of CASA

(1) As directed by the accountable manager, the OPI initiates the development of a CASA and is responsible for:

- (a) Identifying stakeholders affected by the document;
- (b) Developing the CASA using the Template RDIMS 49655407;
- (c) Assigning a CASA document number using RDIMS 5471108;
- (d) Saving the document with the appropriate Subject File Classification Number: Z 5000-35 for a CASA documents within RDIMS (Refer to Appendix B, subparagraph 2.0(1)(f) for the complete list of numbers); and
- (e) Translating the full text in the CASA.

### 9.4 Consultation of CASA

(1) Due to the urgency of disseminating critical safety information, the consultation process for CASAs is left to the discretion of the accountable manager. However, the Director of Policy and Regulatory Services shall always be consulted to determine if a legal review is required. The document and any consultation record should be forwarded to Policy and Regulatory Services (AARBConsultationAARB@tc.gc.ca);

(2) In the event that a legal review is deemed necessary, the Director of Policy and Regulatory Services shall promptly inform the OPI and will make every effort to expedite the review in consideration of the urgency of disseminating the information.

### 9.5 Approval and Finalization of CASA

(1) Once the CASA has been completed, the OPI is responsible for:

- (a) Receiving final signature and approval from the accountable manager;
- (b) Marking the document as “FINAL” in the RDIMS profile, ensuring that the CASA’s integrity is kept and not amended after approval; and

Distributing the CASA to stakeholders as per paragraph 11.2(5) of this document.

*Note: OPIs producing CASAs will document the procedure by which they will carry out the above activities.*



APPENDIX J

Rotor Maxx's AMO Certificate dated December 22, 2014



**Certificate of Approval**

This is to certify that

***Rotor Maxx Support Ltd.***

of

***Parksville, BC***

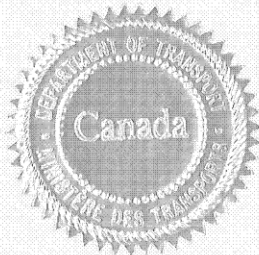
**Approved Maintenance Organization**

**86-06**

is approved pursuant to CAR 573.02 for the maintenance of aeronautical products, and holds ratings in the following categories:

**Aircraft  
Components  
Engines  
NDT**

The scope of privileges applicable to each category is limited to that specified in the respective rating documents that accompany this certificate, and is conditional upon compliance with the approved procedures and limitations specified in the organization's maintenance policy manual.



Signed: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "M. Godsell".

M. Godsell  
For the Minister of Transport

Dated: 2014-12-22

Supersedes certificate dated: 2010-07-29

This Certificate is not transferable. The approval is valid until surrendered, suspended or canceled.

**Canada**



Transports Canada Transport Canada

## Approved Maintenance Organization Ratings

– Aircraft Category –

### *Rotor Maxx Support Ltd.*

Approved Maintenance Organization 86-06

is authorized to perform maintenance, other than specialized maintenance, on aircraft of the types listed below, within the scope of work shown and subject to any further limitations specified in the maintenance policy manual.

Rating	Scope of work	Effective Date
Agusta AW139 helicopters	All non-specialized work	2014-12-22
Airbus Helicopters, AS 355 series helicopters	All non-specialized work	2014-12-22
Airbus Helicopters, AS350 series helicopters	All non-specialized work	2014-12-22
Bell 204 series helicopters	All non-specialized work	2014-12-22
Bell 205 series helicopters	All non-specialized work	2014-12-22
Bell 206 series helicopters	All non-specialized work	2014-12-22
Bell 212/412 series helicopters	All non-specialized work	2014-12-22
Bell 407 series helicopters	All non-specialized work	2014-12-22
Kamov Ka-32 series helicopters	All non-specialized work	2014-12-22
Sikorsky S61 series helicopters	All non-specialized work	2014-12-22
Sikorsky S64 series helicopters	All non-specialized work	2014-12-22
Sikorsky S76 series helicopters	All non-specialized work	2014-12-22
Sikorsky S92 series helicopters	All non-specialized work	2014-12-22

Issued: 2014-12-22

Signed:

M. Godsell  
For the Minister of Transport

Supersedes certificate dated: \_\_\_\_\_

Canada

## APPENDIX K

Relevant sections of *Canadian Aviation Regulations*, SOR/96-433

Division 1- General

Subpart 73- Approved Maintenance Organizations

Application for Approval

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).

Entitlement to and Scope of Certificate

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.

573.02 (2) The AMO certificate shall specify, in accordance with the criteria specified in section 573.02 of Standard 573 — *Approved Maintenance Organizations*, any category in which ratings have been issued and shall list the aeronautical products that the AMO is authorized to maintain or the maintenance services that the AMO is authorized to perform.

573.02 (3) The scope of the work that may be performed under each rating specified on the AMO certificate is determined by limitations that are set out in the certificate.

573.02 (4) Unless an expiry date is specified in an AMO certificate issued pursuant to subsection (1), the certificate remains in effect until it is surrendered, suspended or cancelled

Maintenance Policy Manual:

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*.

#### Technical Records

573.15 An approved maintenance organization (AMO) certificate holder shall maintain records in accordance with section 573.15 of Standard 573 — *Approved Maintenance Organizations* for work performed on all aeronautical products maintained and keep those records for at least two years beginning on the date that the maintenance release was signed.

#### Air Worthiness & Critical Parts

##### Part V – Airworthiness Chapter 529 - Transport Category Rotorcraft

##### 529.602 Critical Parts

(a) Critical part. A critical part is a part, the failure of which could have a catastrophic effect upon the rotorcraft and for which critical characteristics have been identified which, in turn, must be controlled to ensure the required level of integrity.

(b) If the type design includes critical parts, a critical parts list shall be established. Procedures are established to define the critical design characteristics, identify processes that affect those characteristics and identify the design change and process change controls necessary for showing compliance with the quality assurance requirements of Part V, Subparts 21, 61, 71 and Part VI, Subpart 5 of the *Canadian Aviation Regulations*.

##### Part V - Standard 571 - Maintenance

##### 571.07 Installation of New Parts

The standards of airworthiness applicable to the installation of new parts are as follows:

(a) The requirements detailed in section 571.13 of this standard are met;

##### 571.08 Installation of Used Parts

(1) The standards of airworthiness applicable to the installation of used parts are as follows:

(a) the requirements detailed in section 571.13 of this standard are met;

(b) except as provided in (2), used parts shall be accompanied by a maintenance release;

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-444-15

**STYLE OF CAUSE:** ROTOR MAXX SUPPORT LTD. V MINISTER OF  
TRANSPORT

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** FEBRUARY 27, 2017

**JUDGMENT AND REASONS:** MCVEIGH J.

**DATED:** JANUARY 29, 2018

**APPEARANCES:**

Terry R. Davis  
A. Naomi Nind  
Christiana M. Hadzoglou

FOR THE APPLICANT

Robert Drummond  
Damon Park

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

PARLEE MCLAWS LLO  
Calgary, Alberta

FOR THE APPLICANT

Attorney General of Canada  
Edmonton, Alberta

FOR THE RESPONDENT