



REASSESSMENT OF THE RESPONSES TO AVIATION SAFETY RECOMMENDATION A09-06

Oversight

Background

On 11 November 2007, a Bombardier Global 5000 (registration C-GXPR, serial number 9211), operated by Jetport Inc., departed Hamilton, Ontario, for Fox Harbour, Nova Scotia, with two crew members and eight passengers on board. At approximately 1434 Atlantic Standard Time, the aircraft touched down seven feet short of Runway 33 at the Fox Harbour aerodrome. The main landing gear was damaged when it struck the edge of the runway, and directional control was lost when the right main landing gear collapsed. The aircraft departed the right side of the runway and came to a stop 1000 feet from the initial touchdown point. All occupants evacuated the aircraft. One crew member and one passenger suffered serious injuries; the other eight occupants suffered minor injuries. The aircraft sustained major structural damage.

The Board concluded its investigation and released report A07A0134 on 10 November 2009.

Board Recommendation A09-06 (November 2009)

In considering the transfer of regulatory responsibilities, Transport Canada (TC) and the Canadian Business Aviation Association (CBAA) had identified a number of risks in their initial joint studies. To address these risks, the proposed approach included designing a set of performance-based rules directly linked to an operator's safety management system (SMS). Recognizing that oversight of operators would still be required upon assuming regulatory responsibility, the CBAA would have to audit for operator compliance with the rules and standards, and develop and maintain a quality assurance program for its audit processes.

While the studies had charted a plan to mitigate the risks, it was not followed. At the time of the Fox Harbour accident, the CBAA did not participate in, or observe, audits of its private operator certificate (POC) holders and did not have a quality assurance program in place. This allowed deficiencies in Jetport's SMS to go unnoticed. Moreover, the CBAA did not believe that it could force its operators to comply with the requirements of the Business Aviation Operational Safety Standards and, as such, did not insist on milestones for SMS development and implementation.

Since the inception of this new approach to regulating the *Canadian Aviation Regulations* (CARs) subparts 604 operators, TC did not exercise effective oversight of the CBAA, its accredited auditors, or POC holders. It did not have a program established to observe or participate in audits conducted by the CBAA's accredited auditors to verify that this new approach was meeting its safety objectives.

In its assessment in 2007, TC found that the CBAA POC program lacked the required quality assurance program. Yet, an acceptable corrective action plan to address the issue was never submitted. In spite of this, the assessment was officially closed by TC.

Since the Fox Harbour accident, the CBAA has amended its manuals to include a quality assurance framework for its POC program. Its Witness Audit program, implemented in 2009, allows CBAA staff to observe an accredited auditor during the conduct of audits. Observations are de-briefed with the individual auditors and systemic observations are used for auditor training and education and for determining program improvements. While this program seems promising, it is too early to judge its effectiveness.

TC has also taken some steps to improve its oversight of the CBAA POC program, including revisiting the findings of its 2007 assessment.

However, the Board believes that more needs to be done, specifically:

- It is imperative that the CBAA set milestones for SMS development and implementation, and insist they be met by its POC holders.
- The CBAA needs to ensure that comprehensive audits of its operators' SMS are done to ensure that deficiencies are identified and effectively mitigated.
- The CBAA needs to develop and implement an effective quality assurance program for its audit process.
- TC needs to exercise effective supervision of the CBAA to ensure adequate oversight of CARs subpart 604 operators.

If effective oversight of POC holders is not exercised by the regulator, or its delegated organization, there is an increased risk that safety deficiencies will not be identified and properly addressed.

Therefore, the Board recommended that:

The Department of Transport ensure that the Canadian Business Aviation Association implement an effective quality assurance program for auditing certificate holders.

TSB Recommendation A09-06

Transport Canada's response to Recommendation A09-06 (February 2010)

TC agrees with the recommendation. A full review of the CBAA regulatory program, including the requirements to include an effective quality assurance program for auditing certificate holders, has been initiated with the results to be presented for consultation before the Canadian Aviation Regulation Advisory Council (CARAC).

In the meantime, TC continues to work with the CBAA towards strengthening its quality assurance program and will be making the required adjustments to TC's surveillance program.

Transport Canada's response to Recommendation A09-06 (March 2010)

TC announced that it will take back the certification and oversight functions for business aviation from the CBAA. This change will come into effect on 01 April 2011. Starting 01 April 2010, TC will begin enhancing surveillance of the CBAA's certification and oversight functions. During this period of transition, TC will take the opportunity to conduct a complete review of its surveillance and regulatory structure for business aviation operations.

Board assessment of the response to Recommendation A09-06 (May 2010)

The Board's assessment will confine itself to the content of the Minister of Transport's announcement dated 16 March 2010, which supersedes the information contained in TC's response dated 05 February 2010.

TC has indicated that it will begin enhanced surveillance of the CBAA's POC program during the transition period of retracting certification and oversight of business aviation.

During the next year, there will be limited change for business aviation operators. The CBAA will still be responsible for certification of business aviation until 01 April 2011. TC has initiated safety actions, which, if fully implemented, will substantially reduce or eliminate the safety deficiency.

The response is assessed as **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-06 (January 2011)

TC announced that, effective 01 April 2011, the government will take back responsibility for the certification of business aviation operators from the CBAA. TC is completing the regulatory package that will enable the Minister of Transport to repatriate authority in regards to private operators.

Board reassessment of the response to Recommendation A09-06 (March 2011)

With A09-06, the Board recommended that the Department of Transport ensure that the CBAA implement an effective quality assurance program for auditing certificate holders. TC's announcement will remove CBAA from the regulatory structure and CBAA will no longer be responsible for conducting audits of business aviation operators.

The Board expects that TC will establish an effective quality assurance program for auditing certificate holders. This response is assessed as **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-06 (May and September 2011)

May 2011

Requesting this item be closed as a result of pending CAR 604 regulations.

September 2011 update

TC Civil Aviation finalized the drafting of the new 604 subpart to *Canadian Aviation Regulations* that will require a quality assurance program for holders of a private operator certificate.

Board reassessment of the response to Recommendation A09-06 (March 2012)

The intent of Recommendation A09-06 is to ensure that POC holders be subject to an effective quality assurance program. To this effect, the Board expects that TC will establish an effective oversight program for certificate holders.

TC's response centers more on the requirements for certificate holders to have an internal quality assurance program. However, it remains silent on how it is planning to ensure, as the regulator, that an effective program is in place for overseeing these certificate holders.

While TC has requested that Recommendation A09-06 be closed as a result of having finalized the drafting of the new CAR 604 regulations, the Board will wait to see how the new regulations will address the requirement to have an effective program for overseeing certificate holders.

The TSB sent a request for clarification, however, it went unanswered.

The response is considered **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-06 (December 2012)

Regulatory development is continuing for this sector. The impact of the future regulations will be to bring private operators into the TCCA surveillance planning framework. As a result of these future rules including the interim order which is currently in effect, oversight of the CBAA will no longer be necessary. Progress is expected in 2013.

Board reassessment of the response to Recommendation A09-06 (March 2013)

While TC did not provide much detail regarding the progress of the new CARs subpart 604, it appears that regulatory development is continuing for this sector.

The response is considered **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-06 (November 2013)

The proposed regulations containing subpart CAR 604 are anticipated to be pre-published in the *Canada Gazette*, Part I, by the end of 2013.

Board reassessment of the response to Recommendation A09-06 (April 2014)

The proposed regulations containing CARs 604 were pre-published in the *Canada Gazette*, Part I, Vol. 147, No. 49–December 7, 2013. If put in force, these regulations will require CAR 604 operators to establish and maintain a safety management system. Once fully implemented, these regulations will substantially reduce or eliminate the safety deficiency identified during this investigation.

This assessment remains as **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-06 (January 2015)

Transport Canada agrees with the intent of the recommendation. Since regulations containing subpart CAR 604 (including SMS requirements) were published in the *Canada Gazette*, Part II, on June 18, 2014, and will be fully implemented into Transport Canada's surveillance program, the Department believes that it has fully implemented this recommendation.

Board reassessment of the response to Recommendation A09-06 (March 2015)

Transport Canada has taken action that will substantially reduce the safety deficiency identified in A09-06; therefore, the response to the recommendation is considered to be **Fully Satisfactory**.

Next TSB action

This deficiency file is **Closed**.