



REASSESSMENT OF THE RESPONSES TO AVIATION SAFETY RECOMMENDATION A09-05

Oversight

Background

On 11 November 2007, the 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 A09-05 (November 2009)

In considering the transfer of regulatory responsibilities, Transport Canada 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 (BA-OSS) 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) subpart 604 operators, Transport Canada 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, Transport Canada 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 Transport Canada.

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.

Transport Canada 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.
- Transport Canada 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 Canadian Business Aviation Association set safety management system implementation milestones for its certificate holders.

TSB Recommendation A09-05

Canadian Business Aviation Association's response to Recommendation A09-05 (February 2010)

In its initial response, dated 18 February 2010, the CBAA indicated that it concurred with the Board recommendation. On 15 March 2010, the CBAA provided details on the status of CBAA's implementation of the recommendation through its planned amendments to the BA-OSS. The objectives of the proposed amendments were to set objective standards for audit periodicity and to set milestones for achieving minimum SMS levels upon initial certification and within three years thereafter.

The CBAA indicated that private operators will be required to achieve, at minimum, a Level 1 SMS during the initial certification audit and then undergo another audit within one year of operation. Following the initial audit, it was proposed that the audit periodicity be set at one year for a Level 1 SMS, two years for a Level 2 SMS and three years for a Level 3 SMS. Furthermore, in order to maintain a valid POC, a private operator will be required to achieve and maintain a Level 2 SMS within three years after initial certification. No milestone was set for Level 3 SMS.

The CBAA is required under the CARs to consult with its operator members before adopting amendments to the BA-OSS. This consultation process is underway and it was intended that the amendments be adopted by 30 June 2010, dependent on the results of the consultations, with final wording to follow.

However, on 16 March 2010, Transport Canada announced that, effective 01 April 2011, the government was taking back responsibility for the certification of business aviation from the CBAA. Therefore, Transport Canada will be responsible for POC holders and the CBAA will be removed from the regulatory structure. Because of this, the CBAA informed the TSB that it would not be feasible to proceed with the proposed amendments before the transfer date. However, as an interim measure to meet the intent of the recommendation, the CBAA will stress with its accredited auditors the necessity for operators to meet all requirements of the CBAA's SMS standards. In addition, the CBAA will place emphasis on monitoring auditor fulfilment of this requirement through its quality assurance program.

Board assessment of the Canadian Business Aviation Association's response to Recommendation A09-05 (June 2010)

In its response, the CBAA indicated that it agrees with the Board's recommendation. In addition, it indicated that the CBAA planned amendments to the BA-OSS with the objectives of setting objective standards for audit periodicity and to set milestones for achieving minimum SMS levels upon initial certification and within three years thereafter. A consultation process is underway for adoption of the proposed amendments.

However, Transport Canada announced that, effective 01 April 2011, the government will take back responsibility for the certification of business aviation operators from the CBAA, therefore removing the CBAA from the regulatory structure. While the CBAA will not have sufficient time to implement all of its proposed changes before the transfer date, it has indicated that it will stress with its accredited auditors the necessity for operators to meet all requirements of the CBAA's SMS standards.

The combined safety actions initiated by the CBAA and Transport Canada should, if fully implemented, substantially reduce or eliminate the safety deficiency.

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

Canadian Business Aviation Association's response to Recommendation A09-05 (December 2010)

In its response, the CBAA indicates that it has stressed with its accredited auditors the necessity for operators to meet all requirements of CBAA's SMS standards. Further, CBAA has monitored auditor fulfillment of this requirement through its quality assurance program.

Board reassessment of the Canadian Business Aviation Association's response to Recommendation A09-05 (March 2011)

Effective 01 April 2011, TC will take back responsibility for the certification of business aviation operators from the CBAA, removing the CBAA from the regulatory structure. Therefore, the CBAA will not be in a position to continue the BA-OSS amendments process undertaken, with the goal of setting objective standards for audit periodicity and safety management system implementation milestones for its certificate holders.

Since TSB was aware that the responsibility for certification of business aviation operators was being returned to TC, it requested an update from TC as to its plans to address the deficiency identified in Recommendation A09-05. In its response, TC simply stated that since Recommendation A09-05 was directed to the CBAA, the Minister of Transport did not respond.

This recommendation was directed to the CBAA which is no longer in a position to reduce or eliminate the deficiency. However, as TC will be responsible for POC holders, the Board believes that it is also responsible for mitigating the risks associated with Recommendation A09-05. Consequently, the Board expects that TC will establish safety management system implementation milestones for business aviation operators and a system to verify that these milestones are achieved.

This assessment remains **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-05 (May and September 2011)

May 2011

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

September 2011 update

TCCA is finalizing the drafting of a new Subpart 604 to the Canadian Aviation Regulations that will require holders of a private operator certificate to establish a safety management system. This requirement will be a necessary part of certification as a private operator. Once the new subpart comes into effect, all new applicants will need to satisfy its requirements – including the requirement for a safety management system. Existing operators will need to satisfy those requirements before obtaining a private operator certificate issued by Transport Canada. A two-year transition period is anticipated (ending 31 March 2013) marking the point when all existing operators will have to be compliant with the new regulatory requirements.

Board reassessment of Transport Canada's response to Recommendation A09-05 (March 2012)

While TC has requested that Recommendation A09-05 be closed as a result of pending CAR 604 regulations, the Board will wait to see how the new regulations will address the establishment of safety management system implementation milestones for business aviation operators and a system to verify that these milestones are achieved.

This assessment remains **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-05 (December 2012)

Regulatory development is continuing for this sector. A focus group was held in May 2012 to solicit stakeholder input. Publication of the new Subpart 604 is anticipated in the *Canada Gazette* in 2013.

Board reassessment of Transport Canada's response to Recommendation A09-05 A09-05 (March 2013)

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

This assessment remains **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-05 (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 Transport Canada's response to Recommendation A09-05 (April 2014)

The proposed regulations containing CARs 604 were pre-published in the *Canada Gazette*, Part I, Vol. 147, No. 49 — December 07, 2013. If put into 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 **Satisfactory Intent**.

Transport Canada's response to Recommendation A09-05 (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 Transport Canada's response to Recommendation A09-05
(March 2015)**

Transport Canada has taken action that will substantially reduce the safety deficiency identified in Recommendation A09-05; therefore, the response to the recommendation is considered to be **Fully Satisfactory**.

Next TSB action

This deficiency file is **Closed**.