



[2022] 2 F.C.R. D-1

AIR LAW

Appeal from Federal Court judgment (2021 FC 819, [2021] 3 F.C.R. D-16) dismissing appellant's application for judicial review of order made on May 4, 2020, by respondent, Minister of Transport (Minister), under *Aeronautics Act*, R.S.C., 1985, c. A-2 (Act), s. 4.32 — Order prohibiting appellant's proposed development of aerodrome at Saint-Roch-de-l'Achigan, Quebec — Background to dispute November 2016 closure of Mascouche Airport, then operated by members, officers of appellant, efforts to relocate airport — Minister not objecting to development of new aerodrome on land straddling cities of Mascouche, Terrebonne — However, legal dispute between project proponents, City of Mascouche compromised relocation project — Appellant initiated consultation process under *Canadian Aviation Regulations*, SOR/96-433, Part III, Subpart 7 — Project rejected following referendum organized by municipality of Saint-Roch-de-l'Achigan — Three options presented to Minister by Transport Canada officials: (i) not intervening, allowing appellant to proceed with project; (ii) imposing, by ministerial order, conditions appellant must meet before beginning development of proposed aerodrome; (iii) prohibiting project because contrary to public interest — Option of prohibiting project on basis of powers conferred by s. 4.32 recommended to, accepted by Minister — In fall 2019, appellant commissioned noise impact study — Revised report revealing, *inter alia*, noise impact study failed to address municipality's concerns — Minister satisfied consultations conducted by appellant [TRANSLATION] "meaningful" but still believed aerodrome development project at Saint-Roch-de-l'Achigan not in public interest because of impact on local communities — Federal Court satisfied Minister's decision to prohibit project not based on considerations extraneous to Act — Determined open to Minister to consider lack of social acceptability of project, effects on matters within provincial jurisdiction — Concluded Minister's exercise of powers conferred by Act, s. 4.32 reasonable, Federal Court's intervention therefore not warranted by decision to make order — Main issue whether order reasonable — No reason to conclude Minister's decision to make order prohibiting appellant's plan to develop aerodrome at Saint-Roch-de-l'Achigan unreasonable — Wording of s. 4.32 provides useful, even determinative, information on scope of power provided for therein — Actions of decision maker vested with power to intervene in public interest not confined by rigid analysis framework — Reflecting breadth of power available to Minister under s. 4.32 — Granting of power to intervene in public interest [TRANSLATION] "imposes low degree of legal constraint" and, conversely, high level of deference by court called upon to control exercise of such restraint — Wording of s. 4.32 giving Minister highly discretionary power, indicating Parliament's intention for Minister to assess appropriateness, manner of intervening in given case within very non-restrictive legal framework — Parliament clearly gave Minister power to intervene to prohibit aerodrome development — Legislation clear, no other interpretation possible — No regulations concerning prohibition of aerodrome development govern or limit Minister's action — Nothing in s. 4.32 wording making exercise of power provided for therein conditional on adopting regulations to supplement s. 4.32 or to govern exercise thereof — Consultation process in no way procedural framework determining exercise of power provided for in s. 4.32 — Where interaction between s. 4.32, consultation process reviewed on reasonableness, nothing in fact or in law warranting intervention herein — Decision behind making of order not motivated only by referendum results — Alleged breaches of procedural fairness without merit — Appeal dismissed.

11316753 CANADA ASSOCIATION V. CANADA (TRANSPORT) (A-260-21, 2023 FCA 28, LeBlanc J.A., reasons for judgment dated February 7, 2023, 35 pp.)