



[2021] 3 F.C.R. D-16

## AIR LAW

Judicial review of order made by Minister of Transport prohibiting construction of aerodrome on land acquired by applicant in Saint-Roch-de-l'Achigan, Quebec — Applicant non-profit corporation with objective to build, operate aerodrome in municipality of Saint-Roch-de-l'Achigan — In 2019, applicant acquired land required to build aerodrome, began consultation process set out in *Canadian Aviation Regulations*, SOR/96-433, ss. 307.01 to 307.10 — In referendum, majority of residents voted against aerodrome project — Minister of Transport issued order under *Aeronautics Act*, R.S.C., 1985, c. A-2, s. 4.32, prohibiting applicant from building aerodrome — Minister justified decision in part because of lack of clarity regarding impact of noise footprint of proposed aerodrome — Applicant commissioned acoustic study demonstrating proposed aerodrome would not result in noise level above Department of Transport standards — Applicant's file reviewed again by Department of Transport officials — Minister chose to prohibit project — Subsequent memorandum noted, *inter alia*, strong opposition of residents, absence of economic impact study — Minister approved memorandum, signed order — Applicant arguing Minister overstepped authority under Act, s. 4.32, by taking into account considerations extraneous to Act — Applicant also arguing Minister could not consider social licence for aerodrome project in exercising power conferred by s. 4.32 — Main issue whether Minister overstepped authority by issuing order prohibiting construction of aerodrome — Minister's decision reasonable — Decision maker charged with assessing public interest may consider activities not directly within decision maker's regulatory purview — Simply not realistic to examine public interest while wearing blinders — Applicant's arguments all based on false premise of no connection between aviation, concerns of residents regarding environment or land use — Public interest broader than public safety — S. 4.32 making separate mention of aviation safety, public interest — Applicant failed to demonstrate that nature of statutory scheme establishes heavy constraints on exercise of power conferred by s. 4.32 — On contrary, nothing warranting narrowing range of public interest factors Minister may consider — Decision maker charged with assessing public interest may reasonably choose to consider social licence — Particularly true when, as here, project not subject to structured environmental assessment or land use planning process — S. 4.32 not limiting factors Minister may consider in determining whether project contrary to public interest — Act not granting unconditional right to build aerodrome to limit scope of power conferred on Minister by s. 4.32 — Thus, applicant cannot rely on supposedly permissive nature of Act or applicant's right to build aerodrome to limit scope of Minister's authority under s. 4.32 — Regulations, ss. 307.1 to 307.10, not providing exhaustive list of factors Minister may consider, not limiting categories of persons Minister may listen to — Consultation under Regulations not exhausting public interest, not guarantee of social licence — In exercising power in s. 4.32, Minister could therefore consider factors applicant describes as related to social licence — Moreover, how Minister weighed factors reasonable here — Applicant not pointing to any constitutional law argument capable of buttressing such limit on Minister's powers — Application dismissed.

11316753 CANADA ASSOCIATION V. CANADA (TRANSPORT) (T-942-20, 2021 FC 819, Grammond J., reasons for judgment dated August 4, 2021, 39 pp.)