

TRANSPORTATION

Judicial review of decision made by Department of Transport officer refusing to follow up on applicant's formal notice asking Minister of Transport (Minister) to reconsider October 31, 2016, decision approving relocation of activities of former Mascouche airport, project to develop new aerodrome — Project to develop new aerodrome in cities of Mascouche, Terrebonne beginning in 2016 to compensate for imminent cessation of activities at Mascouche Regional Airport — Actors from surrounding community opposed to project — Minister instituting public consultation process by ministerial order pursuant to Aeronautics Act, R.S.C., 1985, c. A 2, s. 4.32(1) — Based on information gathered during public consultation, ministerial order requiring Minister to give notice as to whether development of proposed aerodrome could begin or not — Applicant operating technical landfill site (TLS) a few kilometers from new planned aerodrome — Applicant submitting, in particular, gulls living on periphery of TLS, thus directly in line with proposed runways for new aerodrome — Proposed aerodrome therefore creating danger of collision between avian wildlife, aircraft approaching, taking-off, flying over TLS — Minister approving development of new aerodrome based on recommendations of "Note for the Minister of Transport" (Note) — Note highlighting, inter alia, planned operation can take place safely, project generating economic benefits for aviation sector — Minister's delegate informing proponents of aerodrome development could begin — Applicant sending formal notice to delegate, requesting that Minister reconsider position — Delegate replying that risk lower for small, slow aircraft propelled by piston engines, such as aircraft for planned aerodrome — Also stating aerodrome operators responsible for taking appropriate measures to mitigate negative effects, where necessary, by developing effective management programs, old aerodrome never experiencing problems caused by wildlife activities — Minister relying on operators of proposed aerodrome to take appropriate measures to mitigate adverse effects of aeronautical activities on avian wildlife — Issue whether delegate's conclusion unreasonable and should be set aside — Delegate's decision not unreasonable — Delegate's exercise of administrative, discretionary power not to submit applicant's formal notice to Minister for decision based on particular factual context not involving questions of law — Statutory framework imposing no obligation on Minister to initiate reconsideration procedure in respect of decision related to ministerial order made under Aeronautics Act, s. 4.32(1) — Aeronautics Act also not providing right for applicant to request reconsideration of October 31, 2016, decision — Delegate therefore not required to refer applicant's request for reconsideration to Minister or to recommend re-examination to Minister — Delegate's decision not to refer matter to Minister clearly reasonable exercise of delegate's discretion — Applicant's concerns about bird hazard not rendering decision unreasonable or justifying Court's intervention — Applicant having ample opportunity to put forward point of view, submissions on bird hazard during public consultation carried out following ministerial order — Minister not acting unlawfully, not renouncing prerogatives with respect to safety, security of aeronautical activities — Minister making decision he could make, referring issue to proponents of proposed aerodrome, as authorized under statutory, regulatory framework established by Aeronautics Act, Canadian Aviation Regulations, SOR/96-433 (Regulations) — Applicant confusing notion of renunciation of powers with exercise of regulatory power under Aeronautics Act — Regulations distinguishing between airports, aerodromes — Rules requiring operator of airport to develop wildlife management plan in accordance with Regulations, s. 302.305 applying only to airports, not aerodromes — Allowing proponents to determine, implement required avian risk measure for proposed new aerodrome valid regulatory choice — Nothing in record demonstrating bad faith or arbitrariness in delegate's decision — Many conclusions sought by applicant of nature of mandamus, could not be pronounced by Court in circumstances — Application dismissed.

COMPLEXE ENVIRO PROGRESSIVE LTÉE V. CANADA (TRANSPORT) (T-191-17, 2018 FC 1299, Gascon J., reasons for judgment dated December 21, 2018, 45 pp.)