



**EDITOR'S NOTE:** This document is subject to editorial revision before its reproduction in final form in the *Federal Courts Reports*.

## AIR LAW

*Related subject: Injunctions*

Motion for stay of coming into force of decision by Minister of Transport to prohibit take-offs, landings of Boeing 737-200 aircraft at night at Saint-Hubert Airport — Saint-Hubert Airport located in suburbs south of Montréal, surrounded by residential neighbourhoods — Administered by Développement de l'aéroport de Saint-Hubert de Longueuil (DASH-L) — Since 2019, applicants operating charter flight service on behalf of Baffinland Iron Mines (Baffinland), which operates Mary River Mine on Baffin Island, Nunavut — Because of remoteness of location, mineworkers having to be regularly transported by air — Applicants selected Saint-Hubert Airport as departure point for flights to Mary River Mine — Boeing 737-200 only model of wide-body aircraft currently adapted to land on gravel runway at Mary River Mine aerodrome — Applicants' Boeing 737-200 aircraft regularly taking off, landing at Saint-Hubert Airport at night — Noise produced by these night takeoffs and landings resulted in considerable amount of dissatisfaction within neighbouring population — *Canadian Aviation Regulations*, SOR/96-433, s. 602.105 allowing Minister of Transport to impose noise control requirements, including by prohibiting takeoffs, landings during certain hours — In September 2022, DASH-L proposed that Minister ban takeoff, landing of aircraft with noise profile similar to that of Boeing 737-200 aircraft between 11:00 p.m. and 7:00 a.m., effective April 1, 2024 — Discussions took place between DASH-L, applicants but did not result in an agreement — In March 2024, Minister decided to grant DASH-L's proposal and to [TRANSLATION] "end night flights at the Saint-Hubert Airport" — Whether motion for stay of Minister's decision should be granted — In deciding whether to issue interlocutory injunction or stay, preliminary assessment must be made to ensure serious question to be tried; must be determined whether applicant would suffer irreparable harm if application refused; finally, assessment must be made as to which of parties would suffer greater harm from granting or refusal of remedy pending decision on merits (*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311) — Applicants submitted that Minister's decision flawed, with respect to both procedure, substance — Respondents made detailed submissions to show that Minister complied with procedural fairness, that Minister's decision reasonable — Nonetheless, applicants met low threshold of *prima facie* case (i.e., first part of abovementioned test) — As to second part of test, preventing irreparable harm *raison d'être* of stays, interlocutory injunctions — This is why applicant must show it is likely to suffer irreparable harm if injunction or stay not issued — In essence, applicant alleged that ban on night flights would prevent it from fulfilling its obligations under its contract with Baffinland — In its view, this would result in termination of contract that is its main source of income — Applicants explained that because of workers' schedules, provisions of collective agreements, lack of housing at Mary River Mine, imperative that workers land at specific time of day to ensure smooth staff rotation — Applicants did not adduce sufficient evidence to support alleged harm — Applicants' sweeping statements not meeting requirements set out by Federal Court of Appeal case law — In case at bar, evidence did not support certain links in chain of causation that applicants put forward to prove irreparable harm — Applicants never explained what alternatives had been considered, what obstacles were to their implementation, or what associated costs would be — Nothing in record to suggest that Baffinland intended to terminate contract as soon as night-flight ban came into force — Difficult to see how prohibition on night flights would lead in short term to loss of contract or to bankruptcy of applicants — As Minister's decision not causing irreparable harm to applicants, not strictly necessary to

address balance of convenience issue — In any case, within context of this motion, applicants could not minimize importance of noise-related concerns — Applicants did not demonstrate that inconvenience they would suffer outweighed public interest in reducing noise associated with take-offs, landings of Boeing 737-200 aircraft during night at Saint-Hubert Airport — Motion for stay dismissed.

CHRONO AVIATION INC. V. CANADA (ATTORNEY GENERAL) (T-656-24, 2024 FC 635, Grammond J., order dated April 26, 2024, 21 p.)