

Canada (Transport) v. ITPS (Canada) Ltd., 2026 FCA 112 (CanLII)

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Docket: A-151-26

Citation: 2026 FCA 112

**CORAM: GLEASON J.A.
LASKIN J.A.
LOCKE J.A.**

BETWEEN:

MINISTER OF TRANSPORT

Appellant

and

ITPS (CANADA) LTD.

Respondent

Heard at Toronto, Ontario, on June 9, 2026.

Judgment delivered at Toronto, Ontario, on June 11, 2026.

REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

GLEASON J.A.
LASKIN J.A.

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REASONS FOR JUDGMENT

LOCKE J.A.

[1] The Minister of Transport (the Minister) appeals an Order of the Federal Court ([2026 FC 439](#), the Federal Court's Order), which granted a motion for an interlocutory injunction by the respondent, ITPS (Canada) Ltd. (ITPS). The interlocutory injunction prohibited the Minister from enforcing a notice of restriction (the Notice) made under [section 5.1](#) of the *Aeronautics Act*, R.S.C.

1985, c. A-2. The Notice prohibits certain military aviation training activities except in certain areas.

[2] ITPS trains military pilots out of London International Airport (YXU). This training includes Specialized Air Combat Training (SACT), and it is this training that is targeted by the Notice. On November 18, 2025, a near-miss incident involving an ITPS aircraft occurred on its approach to YXU. The Notice, issued on December 19, 2025 and citing the near-miss incident among others, effectively limits ITPS's SACT activities to an area near North Bay, Ontario, called CYR 599. The Federal Court's Order, dated April 2, 2026, effectively lifted the restrictions imposed by the Notice until the earlier of (i) that Court's decision on the merits of ITPS's application for judicial review thereof, or (ii) July 13, 2026, the date by which ITPS is expected to have relocated its SACT activities to take place out of North Bay's Jack Garland Airport (YYB).

[3] Importantly, this Court, by Order of Justice René LeBlanc dated June 4, 2026, granted a motion by the Minister seeking a stay of the Federal Court's Order pending this Court's decision on the appeal. In that Order, this Court found, among other things, that the balance of convenience favoured lifting the interlocutory injunction. Accordingly, the Notice is currently enforceable, subject to this decision.

[4] There is no dispute between the parties that the Federal Court cited the proper legal test in determining whether to grant the interlocutory injunction that ITPS sought. The Federal Court asked whether ITPS had established that (i) there is a serious issue to be tried in the underlying application for judicial review; (ii) it will suffer irreparable harm if the injunctive relief is not granted; and (iii) the balance of convenience favours the issuance of the injunction: *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 S.C.R. 311, [1994 CanLII 117](#) (*RJR-MacDonald*).

[5] For the purposes of this appeal, it is sufficient for me to address only the issue of the balance of convenience. This issue required the Federal Court to balance the harm to ITPS if the interlocutory

injunction were not granted against the harm to the Minister (and to the public interest) if it were granted. I see errors in the Federal Court's analysis as regards harm to the public interest in the event that the injunction were granted.

[6] At paragraph 52 of its reasons, the Federal Court characterized the Minister's argument as follows:

The Minister submits he does not have to show that the Notice will reduce risks posed by SACT activities. Relying on *Harper v Canada (Attorney General)*, 2000 SCC 57 at paragraphs 9-10 [*Harper*] and *RJR-MacDonald*, he submits that the exercise of the statutory authority to issue the Notice restricting SACT is presumed to promote the public interest, and an injunction that suspends the operation of a law, regulation, or policy is presumed to harm the public interest. These presumptions weigh heavily toward denying injunctive relief that would prevent enforcement of the Notice...

[7] At paragraph 57 of its reasons, the Federal Court questioned whether the Minister's characterization of these authorities was accurate. I see no inaccuracy. The decision in *Harper* leaves little doubt that a validly enacted but challenged law should be presumed to be enacted in the public interest and that this presumption weighs heavily in the balance of convenience. These principles apply equally to orders like the one issued in the present case: *Canada (Attorney General) v. Responsible Plastic Use Coalition*, 2024 FCA 18 at paras. 18-20; *Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency)*, 2025 FCA 164 (*Universal Ostrich Farms*) at para. 50. As stated in *Universal Ostrich Farms* at paragraph 50:

...Where a stay restrains the actions of an administrative agency charged with the duty of promoting or protecting the public interest and where its actions were undertaken pursuant to that responsibility, irreparable harm to the public interest is nearly always established (*RJR-MacDonald* at [p. 346]). In this context, the role of the court in assessing the balance of convenience is circumscribed:

A court should not, as a general rule, attempt to ascertain whether actual harm would result from the restraint sought. To do so would in effect require judicial inquiry into whether the government is governing well, since it implies the possibility that the government action does not have the effect of promoting the public interest and that the restraint of the action would therefore not harm the public interest. (*RJR-MacDonald* at [p. 346])

[8] The Supreme Court of Canada in *RJR-MacDonald* went on at pages 348-349 to state:

When the nature and declared purpose of legislation is to promote the public interest, a motions court should not be concerned whether the legislation actually has such an effect. It must be assumed to do so. In order to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit.

[9] In my view, paragraphs 58 and 59 of the Federal Court's Order stray into impermissible assessment of whether actual harm would be prevented by the Notice and thus of whether the Notice was actually necessary for the public interest. These paragraphs address the risk to public safety prior to issuance of the Notice and the effect of the November 18, 2025 near-miss incident with a view to ascertaining the degree of public interest in issuing the Notice. This contradicts the teaching of the Supreme Court in *RJR-MacDonald* at pages 348-349, where the Court makes it clear that a motions judge should not assess whether the impugned government action actually advances the public interest.

[10] Moreover, at paragraph 58, the Federal Court concluded that the nature and magnitude of any risk to public safety because of SACT activities in unsegregated space was less than the Minister argued, relying on an internal risk assessment by Transport Canada that concluded that the likelihood of an incident was remote or unlikely. While the Federal Court considered the likelihood of an incident, it did not comment on the severity of such an incident should it occur. Severity was addressed in the same internal risk assessment that was cited by the Federal Court. Clearly, an aircraft collision, unlikely though it may be, would be a major incident potentially accompanied by grave, extensive, and irremediable consequences. In neglecting to discuss severity, the Federal Court unfairly minimized the conclusions reached in Transport Canada's risk assessment.

[11] Regarding paragraph 59, the Federal Court emphasized that the November 18, 2025 near-miss incident occurred outside SACT activities and therefore might not have been prevented by the Notice. However, that observation does not materially diminish the broader safety rationale for the Notice. By focusing narrowly on whether this particular incident would have been averted, rather than on the systemic risk addressed by the Notice, the Federal Court misunderstood the public

interest in maintaining the regulatory scheme pending judicial review, thereby erring in its weighing of the public interest.

[12] I conclude that the Federal Court erred by understating the effect of its Order on the public interest. I would allow the appeal and set aside the Federal Court's Order.

[13] Because the interlocutory injunction that ITPS sought before the Federal Court was to expire no later than July 13, 2026 (barely one month from now), it is not practical to remit ITPS's motion to that Court for reconsideration. Accordingly, it should be decided by this Court.

[14] I would dismiss ITPS's motion, focusing again on the balance of convenience requirement from *RJR-MacDonald*.

[15] In essence, I am required to balance the harm to ITPS of having to conduct its SACT activities in CYR 599 between now and July 13, 2026 against the harm to the public interest during that time for not enforcing the Notice (that is, for permitting SACT activities in unsegregated space). Of course, the period in question is short. This serves to mitigate the harm that is likely to be suffered on either side of the balance.

[16] Recognizing, as the Federal Court failed to do, that (i) the Notice is presumed to be in the public interest, which would be harmed by the requested injunction, and evidence is required to overcome this presumption, and (ii) the public interest could be profoundly affected in the event (albeit unlikely) of a collision involving ITPS aircraft, I find that the balance of convenience favours not issuing the requested interlocutory injunction.

[17] For the foregoing reasons, I would allow the present appeal and set aside the Federal Court's Order. Making the decision that Federal Court should have made, I would dismiss ITPS's motion

for an interlocutory injunction. I would award costs to the Minister before this Court and the Federal Court.

"George R. Locke"

J.A.

"I agree.

Mary J.L. Gleason J.A."

"I agree.

J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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MINISTER OF TRANSPORT v. IT
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REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

GLEASON J.A.
LASKIN J.A.

DATED:

JUNE 11, 2026

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