

Federal Court



Cour fédérale

Date: 20260402

Docket: T-302-26

Citation: 2026 FC 439

Toronto, Ontario, April 2, 2026

PRESENT: Madam Justice Pallotta

BETWEEN:

ITPS (CANADA) LTD.

Applicant

and

MINISTER OF TRANSPORT

Respondent

ORDER AND REASONS

I. Introduction

[1] The applicant (ITPS) brings this motion for an interlocutory injunction to prevent the Minister of Transport and his delegates from enforcing a notice of restriction made under section 5.1 of the *Aeronautics Act*, RSC 1985, c A-2, and published on December 22, 2025 (Notice).¹ The Notice prohibits any person from conducting certain military aviation training

¹ The Notice is attached as a schedule.

activities, defined in the Notice, outside of segregated airspace that is designated as “Class F - Restricted” airspace.

[2] ITPS operates an accredited test pilot school based in London, Ontario. ITPS has been training pilots since 2001 and conducts its training out of London International Airport (YXU). Since 2019, ITPS has been training military pilots using ex-military aircraft. It is currently under contract with the government of Canada to train about 80 military pilots from Ukraine by April 2029.

[3] There is no Class F - Restricted airspace near YXU. Before the Notice was issued, ITPS conducted military training by taking off from YXU, flying in non-segregated airspace near YXU, and returning to land at YXU. The restrictions in the Notice now prohibit ITPS from carrying out activities near YXU that account for a significant part of its military training.

[4] ITPS asks for an injunction that would prevent the Notice from being enforced against it until July 13, 2026, or earlier if the underlying application for judicial review is heard and decided on an expedited basis. ITPS seeks to prevent enforcement until July 13, 2026 to mitigate harm to its business, because that is the date of a planned move of its operations to North Bay’s Jack Garland Airport (YYB) to use temporary Class F - Restricted airspace nearby. The Class F - Restricted airspace near YYB, created in July 2025, will be available to ITPS until the government contract ends in April 2029.

[5] ITPS submits it satisfies the three-part test for a time-limited interlocutory injunction: the application for judicial review raises serious issues to be tried with respect to the reasonableness and procedural fairness of the decision to issue the Notice, the Notice will cause ITPS irreparable harm as it poses a real and existential threat to its business, and the balance of convenience favours ITPS.

[6] The Minister submits that ITPS has not met any part of the three-part test for an interlocutory injunction and asks the Court to dismiss the motion.

[7] For the reasons below, I am granting ITPS's motion. ITPS meets the first and second parts of the test for an interlocutory injunction and the motion turns on which party will suffer the greater harm under the third part. I find that ITPS's harm outweighs the Minister's harm and the balance of convenience favours ITPS. I am satisfied that granting an order enjoining the Minister from enforcing the Notice as against ITPS until the earlier of July 13, 2026 and the date this application for judicial review is decided is just and equitable in the circumstances of this case.

II. **Background**

[8] The *Aeronautics Act* is the primary legislation governing civil aviation in Canada, and the Minister is responsible for administering it. Section 5.1 of the *Aeronautics Act* permits the Minister or a person he authorizes to prohibit or restrict the operation of aircraft on or over any area or within any airspace, either absolutely or subject to exceptions or conditions, if in their

opinion the prohibition or restriction is necessary for aviation safety or security or the protection of the public.

[9] The Notice that is at issue here relates to Specialized Air Combat Training (SACT) operations, defined as any “civil training” whose prime function is to provide training related to air-to-air and/or air-to-surface combat operations, including but not limited to air combat maneuvers, evasive maneuvers, and simulated weapons delivery. The Notice imposes restrictions on where SACT may be conducted in Canadian airspace and requires that certain SACT operations be conducted in segregated airspace that is designated Class F - Restricted. Class F - Restricted airspace is essentially closed to air traffic unless the agency controlling the airspace authorizes the flight.

[10] The reference to “civil training” in the Notice’s definition of SACT is presumably meant to exclude Department of National Defence (DND) training operations. ITPS is a civilian SACT operator, and it falls within Transport Canada’s regulatory mandate. ITPS must abide by the *Aeronautics Act* and the regulations made under it, including the *Canadian Aviation Regulations*, SOR/96-433 [CARs] governing aircraft use in Canada. However, according to the Minister, the existing legislative framework for civil aviation does not adequately capture the specialized aviation operations of SACT. The Minister states that the Notice was issued to prevent ITPS and other air operators from engaging in SACT activities in non-segregated civilian airspace that is shared with commercial airlines, flight training schools, and other civilian air traffic.

[11] Before the Minister's delegate issued the Notice, Transport Canada and ITPS had had multiple communications about where ITPS should conduct military pilot training. The parties characterize what happened differently. I have attempted to summarize the main points.

[12] In 2022, Transport Canada raised concerns about ITPS using airspace near YXU for military training. The parties discussed ITPS using airspace in a more remote location like North Bay.

[13] Between 2023 and 2024, the parties discussed Transport Canada's intention to issue a section 5.1 notice that would restrict SACT operations to segregated airspace. ITPS worked with NAV Canada (the company that delivers air navigation services throughout Canadian airspace) to find segregated airspace near YYB and it looked for facilities that would allow it to move its operations to YYB.

[14] In the first half of 2025:

- Transport Canada, NAV Canada, and DND provided assurances that they would support the creation of segregated airspace near YYB.
- ITPS began the process of moving its operations from YXU to YYB. It purchased an aircraft hangar at YYB and contracted with a construction company to update the hangar to meet DND safety standards, an \$8 million investment. Once the construction work is complete, ITPS will move its operations to YYB (including

moving its equipment and personnel). ITPS informed Transport Canada that it expected to be operating out of YYB by July 13, 2026.

- Transport Canada worked with NAV Canada and DND to create CYR 599, a volume of airspace near YYB that has been temporarily designated Class F - Restricted to allow ITPS to meet the terms of the government contract. CYR 599 is overlaid on CYA 521, a military operating airspace for DND use and operations. CYR 599 came into effect in July 2025 and ITPS received assurances that it will remain in effect until the government contract ends on April 30, 2029.

[15] In the second half of 2025, up to issuance of the Notice:

- Late August: Transport Canada informed ITPS that it intended to issue a section 5.1 notice soon.
- Early October: ITPS wrote to the Minister raising concerns with the effects of an imminent section 5.1 notice and risk to ITPS's business.
- November 13: Transport Canada and ITPS met to discuss the proposed section 5.1 notice and ITPS's move to YYB with a planned occupancy date of July 13, 2026. In summary:
 - ITPS was not seeking to prevent a section 5.1 notice from being issued but wanted a dialogue on what parts would apply to its tactical training program.

- The parties agreed that airspace around London is congested. ITPS was willing to share its assessment of aviation risks and the measures it had implemented to reduce them.
- ITPS asked Transport Canada to review the language in the draft section 5.1 notice, to be “less civilian” and a better fit with DND language and ITPS’s training operations. The parties agreed that ITPS is regulated under civilian *CARs* but “DND involvement and CAF fighter aircraft expertise could benefit all parties.”
- Transport Canada re-confirmed its intention to issue the section 5.1 notice to mitigate aviation safety risk. The exact timing was uncertain. Transport Canada strongly encouraged ITPS to use CYR 599 as much as possible before the move.
- As next steps:
 - Transport Canada would send ITPS the definition of SACT;
 - Transport Canada would consider and analyze other options to address SACT operations up to mid-July 2026 and share them with ITPS;
 - ITPS would review its training syllabus and identify training that would clearly fit under the section 5.1 notice versus what requires further discussion or clarification from Transport Canada, and

Transport Canada would organize a meeting with ITPS and others to confirm the SACT operations that would apply under the section 5.1 notice;

- Transport Canada would finalize the section 5.1 notice, recognizing that it needs to be universal and not only focused on ITPS;
 - Transport Canada would “issue 5.1 Notice (date TBD)”;
 - Transport Canada, NAV Canada, and DND would launch an aeronautical study “for a long-term solution” (that is, to define long-term or permanent Class F - Restricted airspace that ITPS could use); Transport Canada had met with NAV Canada to discuss whether an aeronautical study could begin before a section 5.1 notice was issued and was waiting for a reply.
- These next steps would not prevent ITPS from “conducting tactical training operations outside CYR599 between now and July 2026.”
- November 18: There was an incident involving an ITPS ex-military aircraft on its approach to land at YXU. An investigation is underway but is not complete.
 - According to the Minister, the ITPS aircraft missed numerous calls from the air traffic control tower, and a midair collision was only avoided because the other pilot changed course.

- According to ITPS, there was never a risk of a midair collision. While the ITPS aircraft missed calls from the tower (the tower used the wrong call sign, and messages were missed when the ITPS instructor pilot and the tower were attempting to communicate with each other at the same time), the instructor pilot took control from the student pilot, received the tower's message of non-conflicting traffic about one nautical mile away, and followed the tower's directions to climb and remain outside the approach area until cleared for landing. ITPS says the instructor pilot always had the other aircraft in sight and maintained good separation, never coming closer than one nautical mile.

- December 15, 2025: Transport Canada sent a letter to ITPS stating there had been “two near collisions in the past few years” involving ITPS aircraft (referring to the November 18 incident and an April 10, 2021 incident in airspace near Goderich) as well as five monetary penalties that had been issued to ITPS aircraft in the last five years “regarding failure to comply with instructions from air traffic controllers.” The letter states that these events taken together raise significant safety concerns, and concludes:

Transport Canada has determined that SACT activities, when conducted in an airspace shared with other civil aviation users, pose an aviation safety risk that require prompt action. This is due to the nature of SACT involving small and hard-to-see aircraft often performing high-speed maneuvers with frequent changes in altitude and direction.

Consequently, the Department is considering issuing imminently a Notice per section 5.1 of the *Aeronautics Act* to restrict SACT operations to a dedicated airspace in order to mitigate risks to

aviation safety. The proposed Notice of restriction is attached to this letter. This Notice is similar to the version that was shared with you back in 2023.

Also, please note that the issuance of a Notice of restriction regarding SACT operations does not constitute an endorsement by Transport Canada that such operations will be permitted in the future.

- December 19, 2025 (10:24 am): ITPS responded to the December 15 letter and forwarded a copy of the response to the Deputy Minister of Transport. ITPS gave reasons why it believed that immediately issuing the section 5.1 notice would not serve the intended purpose, but rather would reduce aviation safety and severely impact ITPS's ability to meet its timelines for training Ukrainian pilots:
 - (i) restricting SACT operations would not have prevented or meaningfully reduced the likelihood of the events relied upon to justify enforcement under section 5.1; (ii) it was inappropriate to rely on the cited incidents to justify a section 5.1 notice because they were not related to SACT, and because Transport Canada had already taken enforcement or corrective action and was re-using closed incidents to justify a far more severe sanction; (iii) the proposed restrictions would effectively shut down all ITPS's military pilot training, as ITPS does not have and cannot rapidly establish the operational, engineering, and maintenance supports at YYB for safe and reliable operations; (iv) ITPS's safety culture and operational excellence call for a tailored, evidence-based, and proportionate response; (v) the proposed enforcement action is inconsistent with ITPS's discussions with Transport Canada and the agreed July 13, 2026 timeline for transitioning ITPS's operations from YXU to YYB—a timeline that is required for operational, safety, and financial reasons.

- December 19 (4:09 pm): Transport Canada informed ITPS that it had moved ahead with issuing the Notice—the Notice was signed and would be released on December 22, 2025.

[16] ITPS states that the sudden issuance of the Notice has caused and will continue to cause it irreparable harm. The only way ITPS can use CYR 599 for military training before the July 2026 move is by operating out of YYB on a temporary basis, incurring \$1.5 million in additional expenses that cannot be recovered and causing cascading financial impacts that pose a real and existential threat to the business. While Transport Canada undoubtedly has an interest in protecting aviation safety, ITPS says there is no pressing aviation safety concern that requires immediate action. ITPS asks the Court to restore the pre-December 2025 status quo, until July 13, 2026 or an earlier determination of the underlying application.

[17] The Minister states that Transport Canada went out of its way to work with ITPS, even securing airspace for it to operate. However, Transport Canada had a public safety responsibility to restrict SACT activity, especially after the November 18, 2025 incident. According to the Minister, the crux of this motion is whether the Notice, which serves to promote aviation safety and protect the public, should continue, or whether ITPS's private business interests should carry the day.

III. Analysis

[18] The sole issue for determination is whether the Court should enjoin the Minister from enforcing the Notice against ITPS until July 13, 2026.

[19] The three-part test for an interlocutory injunction requires ITPS to establish 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 CanLII 117 (SCC).

[20] While all three parts of the test must be met, they are flexible and interrelated, not watertight compartments; each part relates to the others and focuses the court on factors that inform the exercise of the court's discretion in a particular case: *Monsanto v Canada (Health)*, 2020 FC 1053 at para 50. A fundamental question is whether granting a stay is just and equitable in all of the circumstances of the case: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25.

[21] Each part of the test is addressed in turn below. The applicable legal principles are not in dispute except that the parties disagree on the threshold for meeting the first part of the test, serious issue.

A. *Serious Issue*

(1) The parties' submissions

[22] ITPS submits that it only needs to meet the "usual" low threshold for establishing a serious issue to be tried, namely, that the underlying claim is neither frivolous nor vexatious, and that "the matter is not destined to fail": *RJR-MacDonald* at 337; *Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 23.

[23] ITPS states there are serious issues to be tried with respect to the reasonableness of the decision to issue the Notice. The decision:

- lacked justification, transparency, and intelligibility in that Transport Canada provided shifting justifications for issuing the Notice, asserting that a section 5.1 notice was a necessary prerequisite for an aeronautical study to define segregated airspace and asserting that a section 5.1 notice was necessary for safety reasons; furthermore, it was based on incidents that were not SACT operations and bear no logical relationship to the SACT restrictions that the Notice imposes;
- was unreasonable in light of the legal and factual constraints that bear on it, in that the Notice exceeds the purpose of a section 5.1 notice (which is to limit the operation of aircraft over an area or within a particular airspace) and instead limits the manner in which aircraft may be used and operated in general (which requires a regulation by the Governor in Council pursuant to section 4.9(h) of the *Aeronautics Act*);
- was not justified by the facts and evidence in that the Notice was not issued based on evidence of actual, non-speculative risks to aviation safety, security, or protection of the public from SACT; Transport Canada only decided to conduct an internal assessment of SACT risks in 2024, after a decision to issue a section 5.1 notice restricting SACT had already been made in 2023, and the assessment concluded that the probability of assessed SACT safety risks occurring were considered to be remote/unlikely.

[24] ITPS submits it has also raised a serious issue of procedural unfairness because it was not afforded a level of procedural fairness commensurate with the decision's significant, immediate impacts and the lack of any right of appeal under the *Aeronautics Act: Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paras 21-27; *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at para 54. ITPS states that, at a minimum, it should have been afforded an opportunity to respond before the Minister's delegate issued the Notice. ITPS states it was not afforded an opportunity to address the reasons for issuing the Notice in December 2025, even though Transport Canada knew the impact the Notice would have on ITPS:

- an affidavit by Transport Canada employee Marcia George (George Affidavit) filed in response to this motion identifies concerns that were not shared with ITPS, including concerns identified in the internal risk assessment, which ITPS first received on this motion; moreover, the concerns in the risk assessment were different from the ones given in Transport Canada's December 15, 2025 letter;
- ITPS responded to Transport Canada's December 15 letter on its own initiative, but there is no indication that the Minister's delegate considered ITPS's December 19 response before deciding, on that same day, to issue the Notice.

[25] The Minister submits there is an elevated threshold to meet the first part of the *RJR-MacDonald* test, because the underlying application for judicial review is unlikely to be decided before ITPS's July 2026 move and an interlocutory injunction will effectively grant ITPS the relief it seeks in the application. In such a case, the Court "must take a close look at the merits

and be satisfied, at minimum, that the applicant is likely to prevail”: *Monsanto* at para 56. The Minister contends ITPS has not met the elevated threshold.

[26] The Minister submits ITPS has not raised a serious issue with the reasonableness of the decision to issue the Notice:

- Transport Canada did not provide shifting justifications for the Notice—the aeronautical study that is needed for NAV Canada to designate long-term or permanent segregated airspace is independent of Transport Canada and in no way tied to the Notice;
- sections 4.9(h) and 5.1 of the *Aeronautics Act* serve distinct purposes—section 4.9(h) authorizes the Governor in Council to make regulations regarding aircraft operating standards while section 5.1 empowers the Minister to impose restrictions on the operation of aircraft where necessary for aviation safety or security or public protection; ITPS’s argument that the sweeping powers under section 5.1 do not extend to limiting the manner in which aircraft may be used and operated is without merit;
- ITPS has not raised a serious issue (even on the low threshold) that the cited safety incidents are unrelated to SACT:
 - ITPS’s claim that the two flight incidents and the five fines cited in Transport Canada’s December 15, 2025 letter were not SACT-related does not assist its case, as the risks would only be heightened by smaller

margins of error with the complicated and high-speed military maneuvers of SACT; while there are no regulations pertaining to SACT, the regulatory gap does not render the risks posed by the infractions any less unsafe;

- the Notice was not issued based on the cited incidents alone, but rather, a consideration of the challenges and risks of conducting SACT in civilian airspace; the incidents (especially the November 18, 2025 incident) underscored the need to issue the Notice promptly.

[27] The Minister submits that ITPS also has not raised a serious issue of procedural unfairness. Arguably, the Notice is a regulation that is not subject to procedural fairness requirements, but in any event:

- procedural fairness did not require Transport Canada to provide all the information the Minister's delegate relied on in making the decision, only sufficient information to enable ITPS to respond to the concerns (*Toki v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 606 at para 24; *AB v Canada (Citizenship and Immigration)*, 2013 FC 134 at paras 53-54); ITPS did not need the risk assessment to know the safety concerns about SACT activities in non-segregated airspace;
- ITPS's position that it was not afforded procedural fairness is untenable in light of the documented history of discussions between the parties and the fact that ITPS

has known about Transport Canada's intention to issue a section 5.1 notice since at least 2023.

(2) Analysis

[28] I am not persuaded by the Minister's argument that the elevated threshold for establishing a serious issue applies because granting this motion would effectively give ITPS what it seeks in the underlying application, namely, that it be permitted to perform SACT activities in unrestricted airspace near YXU until it moves its operations to YYB in July 2026. I agree with ITPS that granting the requested injunction would not give it the relief it seeks in the underlying application, which is an order quashing the Notice. The Minister relies on *Monsanto*, but in that case the decision required the applicant to quarantine for 14 days, and the practical effect of an interlocutory injunction was to exempt the applicant from the quarantine requirement. The circumstances here are distinguishable. This motion and the underlying application do not seek the same outcomes, and in my view, the "usual" threshold of establishing a serious issue that is not frivolous or vexatious applies.

[29] Based on the motion record that is before me, I find that ITPS meets the first part of the test. I do not agree with the Minister's arguments that any of the issues ITPS raised lack merit. Without expressing a view on the issues that will be decided in the underlying application, I am satisfied that ITPS has raised serious issues for review.

[30] I would add that the timing of a judicial review hearing on the merits and whether a decision can be made before July is partly within the Minister's control. The Court offered

expedited hearing dates for the underlying application. While ITPS was prepared to proceed as soon as possible on the evidence that is already before the Court, the Minister reserved the right to adduce additional evidence, as he is entitled to do. Some of the offered dates are no longer possible, and if the Minister decides to adduce additional evidence there will be a longer timeline before the underlying application is ready for hearing.

B. *Irreparable Harm*

(1) The parties' submissions

[31] ITPS submits that it will suffer irreparable harm if an injunction is not granted. The Notice effectively prohibits ITPS from operating out of its current facilities, as there is no Class F - Restricted airspace near YXU. While ITPS is in the process of permanently moving its operations to YYB, it needs to complete significant updates to those facilities to meet DND's safety standards and the facilities are not ready.

[32] ITPS points out that its affiants were not cross-examined, and states that the uncontested evidence establishes the "profound and cascading financial impact" of the Notice, which will cause ITPS to incur \$1.5 million in additional unforeseen costs while simultaneously limiting revenue growth. The unforeseen costs are not recoverable, as damages are not available if ITPS is successful in the application for judicial review and ITPS contracted to provide military training for a fixed price.

[33] Moreover, operating out of temporary facilities at YYB threatens ITPS's ability to fulfill its obligations under a government contract that accounts for 75% of its business. ITPS must

train a specific number of pilots each year, and about 50% of the training consists of SACT. Operating out of temporary facilities, without access to its full fleet of aircraft, maintenance facilities, and personnel, will prevent ITPS from meeting contractual milestones that trigger payments. The next milestone deadline, for a \$14.5 million payment, is in May 2026. Delay in triggering milestone payments will create a material funding gap and significant cashflow issues that will need to be bridged with external financing, which may not be available.

[34] ITPS submits there is also a reputational impact that cannot be compensated and will materially impact ITPS's future operations. Undermining ITPS's ability to deliver training services under the existing government contract threatens its ability to secure future contracts.

[35] The Minister submits that ITPS has not met its onus to establish irreparable harm, which requires clear and convincing evidence that demonstrates a real probability of unavoidable harm if the injunction is not granted: *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at paras 31-32. The “mere possibility of financial harm, and even bankruptcy, is not enough to satisfy the irreparable harm test”: *Ontario Securities Commission v Cacoeli Asset Management Inc*, 2025 ONCA 465 at para 30.

[36] The Minister says ITPS's economic losses are avoidable. The Notice does not prevent ITPS from conducting lower risk SACT or other training activities from its current location, and the evidence does not show how much of ITPS's business is impacted by the Notice. More importantly, ITPS can use CYR 599 and it has had that option since July 2025—in fact, ITPS recently accessed CYR 599 in February 2026. ITPS has not explained its failure to shift its

operations to YYB (even if in part or temporarily) in advance of its permanent move. Irreparable harm cannot be harm caused by deliberately choosing to accept a known risk: *Glooscap* at para 39. The Minister states that the harm ITPS claims here is a consequence of its failure to heed Transport Canada's warnings about the issuance of the Notice and avail itself of segregated airspace that was secured for its use.

[37] The Minister submits that, even accepting ITPS's claimed increased costs for fuel, aircraft maintenance, personnel, other operating costs, and lower efficiency, ITPS has failed to demonstrate that the increased costs are prohibitive for its business. The claims that ITPS would be unable to meet contractual milestones and create a funding gap that would put the company's viability at risk are self-serving statements without probative supporting documentation, which is not "clear and convincing" evidence.

[38] According to the Minister, the evidence supporting ITPS's claim of economic loss consists of assumptions that the Notice would greatly impact productivity. ITPS has not provided a copy of the government contract or other documentation demonstrating that it would be unable to meet its contractual milestones and suffer the claimed economic losses, nor has ITPS shown that the claimed economic losses could not be absorbed or mitigated.

[39] The Minister states that ITPS's claim of reputational damage is speculative. The Notice does not render it impossible for ITPS to fulfill its contractual obligations. At most, the Notice increases ITPS's operational costs. There is no evidentiary support for ITPS's claim that its ability to secure future contracts would be impaired if it is not able to operate from YXU.

(2) Analysis

[40] The second part of the *RJR-MacDonald* test asks whether the party seeking injunctive relief will suffer irreparable harm in the event the relief is denied. Irreparable harm refers to the nature of the harm, rather than its magnitude; it is harm that cannot be quantified in monetary terms or cannot be cured: *RJR-MacDonald* at 341. To satisfy this part of the test, the moving party must demonstrate, with clear and convincing evidence, that it will suffer real, definite, unavoidable harm—not hypothetical and speculative harm—that cannot be repaired later: *Janssen* at para 24; *Glooscap* at paras 31-32. The question is whether there is “evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless [an injunction] is granted”: *Glooscap* at para 31.

[41] I find ITPS has established, with clear and convincing evidence, that it will incur significant, unrecoverable costs, and that it will suffer real, definite, and unavoidable harm that cannot be repaired later if the requested interlocutory injunction is denied.

[42] The Minister did not cross-examine ITPS’s affiants and does not challenge its evidence, except to argue that the evidence is insufficient to meet ITPS’s burden. I disagree. The motion record contains the kind of evidence that is required to support irreparable harm: *Canada (Attorney General) v Oshkosh Defense Canada Inc*, 2018 FCA 102 at para 25. ITPS has shown, in a detailed and concrete way, the harm it will suffer that cannot be repaired later if an injunction is denied.

[43] ITPS's evidence is that:

- by the start of February 2026, it would have to conduct all training operations out of YYB, or not at all; due to the restrictions in the Notice, all remaining training for the 10 pilots who were in training as of December 2025 needs to be in Class F - Restricted airspace, and 12 new pilots could begin training outside of Class F - Restricted airspace but all their remaining training needs to be in Class F - Restricted airspace as of February 2026;
- to conduct operations out of YYB in advance of the planned move, and before the facilities under construction are ready, ITPS has to deploy personnel (instructor pilots, maintenance personnel, flight line staff, and aircrew life support equipment technicians) to North Bay on a temporary basis and lease equipment and space; ITPS details the costs of each;
- the Notice affects ITPS's business in other ways, including inefficiencies, risks to milestone payments under the government contract, and the need to limit training by turning away 6-8 students in 2026; ITPS provides estimates of the financial impacts of each.

[44] The evidence shows that the Notice has and will have a significant impact on ITPS's business. ITPS's evidence is that:

- operating out of temporary facilities at YYB will cause ITPS to incur least \$1.5 million in additional costs (over the costs of moving operations to YYB in July as

planned) that are not recoverable through a successful judicial review application and cannot be passed on through the government contract;

- operating out of temporary facilities will also affect revenues and threaten its ability to fulfill obligations under the government contract that accounts for 75% of its business;
- the increased costs and lost revenues caused by the Notice threaten the company's viability.

[45] I do not accept the Minister's arguments that the harm to ITPS is avoidable, of ITPS's own making, or can be absorbed or mitigated. ITPS's unchallenged evidence is that it would have to conduct all training operations out of YYB by the start of February 2026, or not at all. The Minister argues that ITPS could take off from YXU, fly to CYR 599 to conduct training, and then return to land at YXU, but Transport Canada's internal documents acknowledge that the distance prevents this because it exceeds the range the aircraft can cover on a tank of fuel. I fail to see how the harm is of ITPS's own making when ITPS plans to permanently move its operations to YYB in July 2026, and the plans were well underway when the Notice issued, but the facilities are not ready. Regarding whether the harm can be absorbed or mitigated, I see no basis to reject ITPS's evidence that the increased costs and lost revenues caused by the Notice threaten the company's viability.

[46] In summary, ITPS's evidence demonstrates that the Notice has caused and will continue to cause ITPS to incur increased costs and reduced cashflow in order to comply. The evidence

demonstrates a likelihood of significant financial harm, and more than a mere possibility of bankruptcy. ITPS has established irreparable harm to meet the second part of the test for an interlocutory injunction.

C. *Balance of Convenience*

(1) The parties' submissions

[47] ITPS submits that the balance of convenience weighs strongly in favour of granting the injunction.

[48] First, Transport Canada's inaction since ITPS began conducting SACT activities in 2019 undermines any claim of urgency. Transport Canada was fully aware of ITPS's SACT activities in London, spent years idly deliberating over its regulatory approach without taking any steps to restrict ITPS's operations, and one month before issuing the Notice, Transport Canada advised that the timing of a section 5.1 notice remained uncertain and it would not prevent ITPS from conducting SACT outside of CYR 599 before July 2026. The safety issues the Minister relies on to justify the Notice ring hollow in light of Transport Canada's prolonged inaction.

[49] Second, the evidence of ITPS's affiants should be preferred over that of the Minister's affiant. The evidence in the George Affidavit is unreliable and should be given minimal weight, including because:

- Ms. George admitted on cross-examination that her affidavit did not identify what evidence was based on personal knowledge and what evidence was based on information and belief, contrary to rule 81 of the *Federal Courts Rules*,

SOR/98-106 (*Akme Poultry Butter & Eggs Distributors Inc v Canada (Public Safety and Emergency Preparedness)*), 2024 CanLII 30068 (FC) at paras 16-17; *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 223 at para 32);

- Ms. George admitted to giving evidence about SACT that was not based on her personal knowledge and came from the internal risk assessment; she could not identify the authors of that assessment, their qualifications, or when they completed it, meaning the alleged foundation for the Notice is a document whose provenance Ms. George could not explain;
- the safety issues Transport Canada identified as the basis for the decision to issue the Notice are unrelated to SACT, and Ms. George was unable to identify a single ITPS safety incident involving SACT;
- the George Affidavit suggests that the airspace near YXU is highly congested, referring to flight path diagrams, and states this “underscor[ed] Transport Canada’s concerns about SACT activities in such an airspace”; however, the risk assessment does not mention airspace congestion as a risk factor in relation to SACT, and Ms. George’s cross-examination cast doubt on the probative value of the flight path diagrams.

[50] Third, ITPS submits that the public interest favours granting the injunction. The effects of not granting the injunction extend beyond ITPS, to compromise Canada’s commitments to train allied pilots and support Ukraine’s defence efforts.

[51] The Minister submits that the balance of convenience favours a refusal of the injunction.

[52] 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 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. Contrary to ITPS's bald assertions, it does not act in the public interest and there is no evidence that its operations are necessary for Canada to honour its commitments.

[53] The Minister submits that the time between Transport Canada's first consideration of a section 5.1 notice and its issuance does not militate against the urgent need to enforce the Notice pending judicial review. The internal discussions and the risk assessment reflect Transport Canada's due diligence in ensuring that any restriction on SACT activities was necessary and commensurate with the risks posed. ITPS benefitted from the time required to complete this process by performing SACT in non-segregated airspace, but it does not follow that ITPS should be entitled to continue its operations in that airspace after the Notice issued.

[54] Furthermore, ITPS's arguments about delay ignore two key developments that impacted the timing of the Notice: (i) ITPS was granted access to Class F - Restricted airspace in July 2025, and (ii) there was a near miss incident on November 18, 2025. What ITPS characterizes as

years idly deliberating over a regulatory approach was Transport Canada's effort to consider ITPS's interests and help it to access segregated airspace. The November 18, 2025 near-miss incident compounded the safety concerns and brought the need for an imminent section 5.1 notice to the forefront.

[55] The Minister submits that the Court should reject arguments that Ms. George's evidence is unreliable. There is no principled basis to question the reliability or accuracy of the risk assessment because she could not name the specific authors and their expertise on cross-examination. The risk assessment was completed by government officials in the course of their duties and there is no principled basis to question its reliability. In fact, Ms. George is a public servant who is presumed to be acting in good faith, whereas ITPS's affiants are motivated by financial benefit and not any public interest responsibility.

(2) Analysis

[56] The third part of the test requires the Court to determine which of the two parties will suffer the greatest harm from granting or refusing the injunction. It is a weighing exercise.

[57] I question whether *Harper* and *RJR-MacDonald* go as far the Minister suggests on the public interest presumption. Nonetheless, I accept that the purpose of section 5.1 of the *Aeronautics Act* is to protect public safety, and that Parliament has empowered the Minister or his delegate to issue a section 5.1 notice if they are of the opinion that it is necessary for aviation safety or security or the protection of the public. I also accept that the public interest considerations in this case are weighty. However, I find that ITPS has demonstrated, with

evidence that I find to be clear and convincing, that the harm it would suffer from a denial of injunctive relief outweighs the harm to the Minister from granting it and the public interest considerations of this case.

[58] First, ITPS is requesting relief that would allow it to continue doing what it had been permitted to do for many years. The fact that ITPS conducted SACT activities in unsegregated airspace for years without the Minister issuing a section 5.1 notice or enacting a regulatory restriction signifies, in my view, that the nature and magnitude of any risk to public safety is not as high as the Minister suggests. Further, as ITPS points out, Transport Canada's internal risk assessment, which was based on hypothetical safety scenarios, concluded that the probability that those safety scenarios will occur was assessed as 2 on a 5-point scale (corresponding to remote or unlikely), and the assessment did not trigger immediate remedial action.

[59] The evidence also indicates that, when the parties met in November 2025, no decision had been made on when to issue a section 5.1 notice—the date was to be determined. It was only after the November 18, 2025 incident that Transport Canada sent a letter stating it had determined that SACT activities in airspace shared with other civil aviation users poses an aviation risk that requires prompt action. As noted above, the November 18, 2025 incident is the subject of an open investigation, but there is no dispute that it happened during landing and that landing is not a SACT activity. The Notice does not prohibit military or ex-military aircraft from landing at YXU and in fact, the Minister argued that ITPS is allowed to take off from and land at YXU, as long as it conducts its training operations in the right airspace according to the Notice. The investigation and any enforcement action regarding the incident will be governed by existing

legislation, and the Minister does not argue on this motion that the incident would have contravened the Notice, had the Notice been in place on November 18, 2025.

[60] Second, for the reasons explained under the second part of the test, ITPS has shown that it would suffer irreparable harm. That harm is substantial and significant.

[61] Third, the duration of the requested injunction is short—3.5 months at most, and shorter if the underlying application can be heard and decided on an expedited basis.

[62] Aviation safety is clearly an important public interest factor to weigh in the balance. However, considering everything that led to the issuance of the Notice, I am not persuaded the reasons for issuing the Notice in December 2025 or any alleged safety risks related to ITPS's SACT operations outweigh the damage to ITPS if an injunction is denied. Weighing the harm to each party, I find that the balance of convenience favours ITPS.

[63] Finally, an interlocutory injunction is equitable relief. I find that there are additional equitable considerations that weigh in ITPS's favour.

[64] The evidence in the record indicates that Transport Canada and ITPS were acting in good faith to find a solution. As examples, Transport Canada helped to secure temporary Class F - Restricted airspace so that ITPS could meet its contractual training obligations, and ITPS is moving its operations to YYB even though the airspace has only been promised until April 2029.

[65] At the November 13, 2025 meeting, the parties agreed to a series of next steps, including that Transport Canada would explore and share options to address SACT operations until mid-July 2026 and it would launch an aeronautical study with NAV Canada and DND to find a long-term solution. Transport Canada also stated that the next steps would not prevent ITPS from conducting tactical training operations outside CYR 599 between the meeting and July 2026. Considering all of the communications that happened before it, the decision to issue the Notice following the November 18, 2025 incident (that was not a SACT operation) seems to be a change of course, and a relatively sudden one, that Transport Canada knew would significantly impact ITPS.

IV. **Conclusion**

[66] ITPS meets the test for an interlocutory injunction, and I am satisfied that granting an order enjoining the Minister from enforcing the Notice as against ITPS until the earlier of July 13, 2026 and the date this application for judicial review is decided is just and equitable in the circumstances of this case.

[67] ITPS asks to be relieved of the rule 373(2) undertaking to abide by any order concerning damages caused by granting the injunction, because the injunction will be short and there is no evidence it will cause the Minister financial harm if the Court dismisses the application for judicial review: *Key v Cote*, 2025 CanLII 27039 (FC) at paras 111-115. The Minister did not make submissions on this point. For the reasons argued, I am satisfied that ITPS should be relieved of the rule 373(2) undertaking.

[68] Both sides asked for costs of the motion but there was insufficient hearing time for cost submissions. If the parties require a disposition on costs, they shall have 5 days to jointly propose a disposition or alternatively propose a timetable for written submissions.

ORDER IN T-302-26

THIS COURT ORDERS that:

1. The applicant's motion is granted.
2. The Minister of Transport and his delegates are enjoined from enforcing the Notice as against the applicant, until the earlier of July 13, 2026 and the date this application for judicial review is decided.
3. The applicant is relieved of the rule 373(2) undertaking.
4. If the parties require a disposition on costs, they shall have 5 days to jointly propose a disposition or alternatively propose a timetable for written submissions.

"Christine M. Pallotta"

Judge

SCHEDULE

From: [CAR Consultations / RAC Consultations \(TC\)](#)
Subject: Notice of Activity: Notice of Restriction, Specialized Air Combat Training (SACT)/ Avis d'activité: Avis de restriction, les opérations d'entraînement au combat aérien spécialisé (ECAS)
Date: Monday, December 22, 2025 11:52:06 AM

UNCLASSIFIED / NON CLASSIFIÉ

(Le texte français suit l'anglais)

Dear CARAC Members,

This message is to inform you that a Notice of Restriction, made pursuant to section 5.1 of the *Aeronautics Act* is now in force as of December 19, 2025.

Under this Notice of Restriction, Specialized Air Combat Training (SACT) operations are restricted to dedicated airspace to mitigate risks to aviation safety.

Please note that further restrictions or regulations could be issued at a later time regarding the conduct of Specialty Air Combat Training Operations in Canada.

An Aeronautical Information Circular detailing the SACT restrictions will be issued shortly.

Sincerely,

Canadian Aviation Regulation Advisory Council | Conseil consultatif sur la
réglementation aérienne canadienne
Transport Canada | Transports Canada
Government of Canada | Gouvernement du Canada
Place de Ville, 330 Sparks Street, AARK
Ottawa, Ontario K1A 0N5
[Canadian Aviation Regulation Advisory Council \(CARAC\)](#) | [Conseil consultatif sur la
réglementation aérienne canadienne \(CCRAC\)](#)

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Restrictions and prohibitions for safety or security purposes

5.1 The Minister or any person authorized by the Minister may by notice prohibit or restrict the operation of aircraft on or over any area or within any airspace, either absolutely or subject to any exceptions or conditions that the Minister or person may specify, if, in the opinion of the Minister or person, the prohibition or restriction is necessary for aviation safety or security or the protection of the public. R.S., 1985, c. 33 (1st Supp.), s. 1; 2004, c. 15, s. 8.

Definitions

Built Up Area for the purposes of this notice, means a population centre with a density of greater than 25 persons per square kilometer based on Statistics Canada's Aggregate Dissemination Areas available online.

Sparsely Settled Area, in this notice, means a geographically defined area within which the population density is dispersed at a density less than 25 persons per square kilometer based on Statistics Canada's Aggregate Dissemination Areas available online.

Remote Area means a geographically defined area within which the population density is dispersed at a density of less than 5 persons per square kilometer based on Statistics Canada's Aggregate Dissemination Areas available online.

Specialty Air Combat Training (SACT) Operations means any civil training, whose prime function is to provide training related to air-to-air and/or air-to-surface combat operations. This includes but is not limited to air combat maneuvers, evasive maneuvers, and simulated weapons delivery.

Tactical Navigation Training is a SACT activity that is carried out in Class G, F or E airspace (excluding Class E CTZ) which involves(s) one or multiple aircraft in close or tactical formation conducting navigation exercises using their own navigation, along pre-planned surveyed routes, not involving any interactions with simulated opponents, any simulated weapons profiles, tactical profiles, or defensive manoeuvres.

Close formation means a formation of 2 or more aircraft under the command of a flight leader and for which the wingmen fly with sole reference to the lead aircraft. This type of activity precludes any possibility for the wingmen to lookout for other aircraft and relies entirely on the flight lead to perform the "see and avoid" functions.

Tactical formation involves special maneuvering during SACT activities of more than 1 aircraft that are under the command of a flight leader, using a standardized set of signals and commands to direct the other aircraft in the formation. Tactical Formation requires the special attention of all pilots to coordinate and deconflict paths between members of the formation.

Activities related to defence, are activities administered by the Minister of National Defence.

Application

Pursuant to section 5.1 of the *Aeronautics Act* no person shall operate an aircraft to conduct Specialty Air Combat Training in Canadian airspace, unless conducted in accordance with the conditions below.

1. Except for the purpose of Tactical Navigation Training, all other Specialty Air Combat Training Operations shall be conducted in Class F – Restricted airspace.
2. All Tactical Navigation Training shall be conducted as follows:
 - a. All navigation routes will be outside of Class A, B, C or D airspace, or Class E Control Zones at all times.
 - b. Except for the purpose of take-off and landing, navigation routes shall not be within aerodrome control zones or within 10 nm of an aerodrome, whichever is greater, or within 10 nm from a built-up area.
 - c. Minimum altitude shall be 5,000 ft AGL in Sparsely Settled Areas and 1,000 ft AGL in Remote Areas, unless in Class F – Restricted airspace.
 - d. Due to the high closure speeds involved, the VFR weather limits for controlled airspace (CAR 602.114) shall apply; and
 - e. While onboard radar, ADS-B-IN and other sensors may be used for enhanced situational awareness, they shall not be relied upon to replace the “see and avoid” principle.

Note:

For greater certainty, further restrictions or regulations could be issued at a later time regarding the conduct of Specialty Air Combat Training Operations in Canada.

Aux membres du CCRAC,

Le présent courriel vise à vous informer qu’un avis de restriction, publié en vertu de l’article 5.1 de la *Loi sur l’aéronautique*, est maintenant en vigueur depuis 19, décembre 2025.

En vertu de cet avis de restriction, les opérations d’entraînement au combat aérien spécialisé (ECAS) sont limitées à un espace aérien désigné afin de réduire les risques pour la sécurité aérienne.

Veillez noter que d’autres restrictions ou réglementations pourraient être mises en œuvre ultérieurement concernant la tenue d’opérations d’entraînement au combat aérien spécialisé au Canada.

Une circulaire d’information aéronautique décrivant les restrictions relatives à l’ECAS sera publiée prochainement.

Cordialement,

Canadian Aviation Regulation Advisory Council | Conseil consultatif sur la réglementation

aérienne canadienne
 Transport Canada | Transports Canada
 Government of Canada | Gouvernement du Canada
 Place de Ville, 330, rue Sparks, AARK
 Ottawa (Ontario) K1A 0N5
[Canadian Aviation Regulation Advisory Council \(CARAC\)](#) | [Conseil consultatif sur la réglementation aérienne canadienne \(CCRAC\)](#)

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Restrictions et interdictions – Sécurité et sûreté aériennes

5.1 Le ministre ou son délégué peut, par avis, lorsqu'il estime que la sécurité ou la sûreté aérienne ou la protection du public le requiert, interdire ou restreindre l'utilisation d'aéronefs en vol ou au sol dans telle zone ou dans tel espace aérien, et ce, soit absolument, soit sous réserve des conditions ou exceptions qu'il détermine. L.R. (1985), ch. 33 (1er suppl.), art. 1; 2004, ch. 15. art. 8

Définitions

Aux fins du présent avis, on entend par « zone bâtie » un centre de population dont la densité est supérieure à 25 personnes par kilomètre carré, selon les données de Statistique Canada sur les aires de diffusion agrégées disponibles en ligne.

Aux fins du présent avis, on entend par « région faiblement peuplée » une région géographiquement définie dans laquelle la densité de la population est inférieure à 25 personnes par kilomètre carré, selon les données de Statistique Canada sur les aires de diffusion agrégées disponibles en ligne.

On entend par « région éloignée » une région géographique définie dans laquelle la densité de population est inférieure à 5 personnes par kilomètre carré, selon les données de Statistique Canada sur les aires de diffusion agrégées disponibles en ligne.

On entend par « opérations d'entraînement au combat aérien spécialisé » (ECAS) tout entraînement civil dont la fonction première est de fournir un entraînement lié aux opérations de combat air-air ou air-sol. Cela comprend, sans s'y limiter, les manœuvres de combat aérien, les manœuvres d'évasion et les simulations de lancement d'armes.

L'entraînement à la navigation tactique est une activité d'ECAS qui se déroule dans l'espace aérien de classe G, F ou E (à l'exclusion de la zone de contrôle aérien de classe E) et qui

comprend un ou plusieurs aéronefs évoluant en formation rapprochée ou tactique et effectuant des exercices à l'aide de leurs propres moyens de navigation, le long d'itinéraires préétablis et prévisualisés, sans interaction avec des adversaires simulés, sans profil d'armes simulées, sans profil tactique et sans manœuvres défensives.

On entend par « formation rapprochée » une formation composée d'au moins 2 aéronefs placés sous le commandement d'un chef de formation, dans laquelle les ailiers volent en se rapportant uniquement à l'aéronef de tête. Ce type d'activité ne donne pas aux ailiers la possibilité de surveiller les autres aéronefs et repose entièrement sur le chef de formation pour assurer les fonctions « voir et éviter ».

La formation tactique désigne les manœuvres spéciales exécutées lors d'activités d'ECAS effectuées par plusieurs aéronefs placés sous le commandement d'un chef de formation, à l'aide d'un ensemble normalisé de signaux et de commandes pour diriger les autres aéronefs de la formation. La formation tactique nécessite une attention particulière de la part de tous les pilotes afin de coordonner et d'harmoniser les trajectoires entre les membres de la formation.

Les activités liées à la défense sont des activités administrées par le ministre de la Défense nationale.

Mise en application

En vertu de l'article 5.1 de la Loi sur l'aéronautique, personne ne doit utiliser un aéronef pour effectuer un entraînement au combat aérien spécialisé dans l'espace aérien canadien, à moins que cet entraînement ne soit effectué conformément aux conditions ci-dessous.

1. À l'exception de l'entraînement à la navigation tactique, toutes les autres opérations d'entraînement au combat aérien spécialisé sont effectuées dans l'espace aérien réglementé de classe F.
2. L'ensemble de l'entraînement à la navigation tactique se déroule comme suit :
 - a. Toutes les trajectoires se situent en permanence en dehors des espaces aériens de classe A, B, C ou D, ou des zones de contrôle de classe E.
 - b. Sauf aux fins du décollage et de l'atterrissage, les trajectoires ne sont pas situées dans les zones de contrôle d'aérodrome ou à moins de 10 milles marins d'un aérodrome, la valeur la plus élevée étant retenue, ou à moins de 10 milles marins d'une zone bâtie.
 - c. L'altitude minimale est de 5 000 pi au-dessus du sol (AGL) dans les régions faiblement peuplées et de 1 000 pi AGL dans les régions éloignées, sauf dans l'espace aérien réglementé de classe F.
 - d. En raison des vitesses de rapprochement élevées, les limites météorologiques requises pour voler selon les règles de vol à vue (VFR) dans l'espace aérien contrôlé (RAC 602.114) s'appliquent.
 - e. Si le radar embarqué, la surveillance dépendante automatique en mode diffusion – réception (ADS-B réception) et d'autres capteurs peuvent être utilisés pour améliorer la connaissance de la situation, ils ne doivent pas remplacer le principe « voir et éviter ».

Remarque :

1. Il est entendu que d'autres restrictions ou réglementations pourraient être mises en œuvre ultérieurement concernant la tenue d'opérations d'entraînement au combat aérien spécialisé au Canada.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-302-26

STYLE OF CAUSE: ITPS (CANADA) LTD. v MINISTER OF TRANSPORT

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 18, 2026

ORDER AND REASONS: PALLOTTA J.

DATED: APRIL 2, 2026

APPEARANCES:

Daniel Goudge
Sarah Fooks

FOR THE APPLICANT

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