

Court File No.

3992/13

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BURLINGTON AIRPARK INC.

Applicant

- and -

THE CORPORATION OF THE CITY OF BURLINGTON

Respondent

APPLICATION UNDER Rule 14.05(3)(d) and (g)

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Wednesday the 28th day of August, 2013 at 10:00 o'clock in the forenoon, at 491 Steeles Ave E. Milton ON.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY
LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A
LOCAL LEGAL AID OFFICE.

Date July 17, 2013

Issued by


Local registrar

Address of 491 Steeles Ave E. Milton ON
court office L9T 1Y7

TO: Corporation of the City of Burlington
426 Brant Street
Burlington ON L7R 3Z6, Canada

APPLICATION

1. The applicant makes application for:
 - (a) an order pursuant to Rule 14.05(3)(d) declaring the applicant's rights under the *Constitution Act, 1867* and the *Aeronautics Act*, R.S.C., 1985, c. A-2 as amended ("*Aeronautics Act*") and the regulations thereunder;
 - (b) an order pursuant to Rule 14.05(3)(d) declaring the applicant's rights under the *City of Burlington Topsoil Preservation and Site Alteration By-law* (By-law 6-2003); more specifically a declaration that such by-law does not apply to the applicant's operations and construction of aerodrome facilities on its premises;
 - (c) an order pursuant to Rule 14.05(3)(d) declaring that a certain purported order to comply issued by the respondent on or about May 3, 2013 is null and void and of no legal effect;
 - (d) an injunction pursuant to Rule 14.05(3)(g) ancillary to the relief claimed in subparagraphs (a) through (c) enjoining the respondent and anyone acting on its behalf from interfering or attempting to interfere with the applicant's operations and construction of aerodrome facilities on its premises;
 - (e) its costs, together with H.S.T.;
 - (f) such further or other ancillary relief as seems just in the circumstances.
2. The grounds for the application are:
 - (a) The applicant owns and operates the Burlington Executive Airport which occupies land between Bell School Line and Appleby Line within the boundaries of the City of Burlington;
 - (b) The Burlington Executive Airport was established in 1962. It is a registered aerodrome under Part III, Section 301.01 of the *Canadian*

Aviation Regulations which are made under the authority granted the Minister of Transport under the *Aeronautics Act*. The Burlington Executive Airport has received the designation "CZBA" from Transport Canada and is listed with that designation in the *Canadian Flight Supplement* published by Transport Canada.

- (c) The applicant is expanding the facilities of the Burlington Executive Airport by improving and adding to its runways, taxiways, aprons, hangers and terminal facilities. This activity has been reported to the Minister of Transport in accordance with the requirements of section 301.03(3) of the *Canadian Aviation Regulations*.
- (d) These improvements involve the use of fill to bring the elevation of the western Airport lands to substantially the same grade as the existing main runway so as to allow safe flight operations at the Burlington Executive Airport. The fill work has been ongoing since 2008, and the respondent's staff have been aware of this work since at least September 2008. The fill work is now over 90% complete. The applicant has in fact built a portion of a newly paved runway 09/27 (replacing an older grass strip), and associated taxiway, a hangar, apron and a separate taxiway servicing same on various portions of the filled lands during this period.
- (e) The respondent previously accepted that any activities related to aeronautics, including any expansion of existing airparks or airports are subject to Federal regulation under Transport Canada, and are not required to comply with local or provincial plans, policies, by-laws or regulations. More particularly, the respondent previously accepted that the grading and filling work at the Airport was for aeronautical purposes, fell under Federal Jurisdiction and that municipal by-laws did not apply.
- (f) On or about May 3, 2013 the respondent purported to issue an order to comply that directed the applicant to stop site alterations immediately and apply for a Site Alteration Permit.

- (g) Since that date the respondent has taken and threatens to take steps that would interfere with the applicant's lawful operation of the Burlington Executive Airport.

3. The following documentary evidence will be used at the hearing of the application:

- (a) affidavits of Vincent Rossi and others to be sworn and delivered in due course; and
- (b) such further or other material as counsel may advise and the Court may permit.

July 17, 2013

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Lawyers for the Applicant

BURLINGTON AIRPARK INC. and THE CORPORATION OF THE CITY OF
Applicant Respondent
BURLINGTON

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Proceeding commenced at Milton

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