

Court File No. C

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**THE CORPORATION OF THE CITY OF BURLINGTON**

**Applicant  
(Respondent in appeal)**

**- and -**

**BURLINGTON AIRPARK INC.**

**Respondent  
(Appellant)**

**NOTICE OF APPEAL**

THE respondent Burlington Airpark Inc. APPEALS to the Court of Appeal from the judgment of Mr. Justice M.R. Gibson dated June 30, 2016 made at Milton.

THE APPELLANT ASKS that the judgment be set aside and judgment be granted declaring City of Burlington By-Law 64-2014 to be *ultra vires*, or inapplicable to the operations of the Appellant, Burlington Airpark Inc., and in particular to the placement of soils in and about aircraft runways and aircraft taxiways at the Burlington Airpark (the "Airpark") prior to April 27, 2013.

THE GROUNDS OF APPEAL are as follows:

1. Justice Gibson erred in fact and law in failing to hold that By-Law 64-2014 is *ultra vires* the City or inapplicable to the Airpark by virtue of the doctrine of interjurisdictional immunity. The pith and substance of by-Law 64-2014 is the regulation of an aerodrome, which matter falls within the exclusive jurisdiction of

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Parliament. The relief requested by the City in its notice of application would have had a serious impact on the aeronautics power as it would have resulted in unsafe conditions at the Airpark, if not its dismemberment.

2. Justice Gibson erred in principle in failing to have appropriate regard to extrinsic evidence to determine the pith and substance of By-Law 64-2014.

3. Justice Gibson erred in law in admitting and relying upon expert testimony regarding the quality of the fill placed at the Airpark between 2008 and 2013 from a witness whose independence was not properly established and who was therefore not a properly qualified expert under Ontario law.

4. Justice Gibson made palpable and overriding errors of fact by overlooking or ignoring the uncontradicted evidence of a properly qualified expert in the design and construction of aerodromes whose evidence was tendered by the Appellant.

5. Justice Gibson erred in principle and made palpable and overriding errors of fact in finding that the Appellant had been carrying on a “a commercial fill operation”, and erred in law in relying upon that finding to determine, among other things, the constitutional validity or applicability of By-Law 64-2014.

6. Justice Gibson erred in law in holding that the Appellants were barred from challenging the constitutional validity of By-Law 64-2014 on the ground of issue estoppel.

7. Justice Gibson erred in law in his interpretation of the Ontario *Legislation Act*, and in relying upon that statute to hold that an order against the Appellant issued under a

repealed By-Law (By-Law 6-2003) remained in full force and effect notwithstanding the repeal of that by-law.

8. Justice Gibson erred in law in failing to find the City's application barred by the *Limitations Act*.

9. Justice Gibson erred in fact and law in failing to apply the doctrine of estoppel to prevent the City from taking steps to enforce By-Law 64-2014 or By-Law 6-2003 against the Appellant in view of the City's prior statements and conduct toward the Appellant and upon which the Appellant had reasonably relied to its detriment.

10. Justice Gibson erred in law in failing to find By-Law 64-2014 void for vagueness and uncertainty.

11. Justice Gibson erred in law and made palpable and overriding errors of fact in finding that soil placed in or about runways and taxiways at the Airpark might be contaminated.

12. The Appellant relies upon such further and other grounds as counsel may advise and this Honourable Court may consider.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS: Section 6(1)(b) of the *Courts of Justice Act* and Rule 61.04 of the *Rules of Civil Procedure*.

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July 29, 2016

MCMILLAN LLP  
181 Bay Street, Suite 4400  
Toronto ON M5J 2T3, Canada

Peter E.J. Wells LS#: 18002S  
Tel: (416) 307-4007 / Fax: (416) 865-7048  
Glenn Grenier LS#: 32272T  
Tel: (416) 307-4005 / Fax: (416) 865-7048

Lawyers for the Respondent  
(Appellant)

TO: GARDINER ROBERTS LLP  
40 King Street West, Suite 3100  
Toronto ON M5H 3Y2, Canada

Ian Blue LS#: 14641J  
Tel: (416) 865-2962 / Fax: (416) 865-6636  
Anna Husa LS#: 45987L  
Tel: (416) 865-6687 / Fax: (416) 865-6636

Lawyers for the Applicant  
(Respondent in appeal)

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Proceeding commenced at Toronto

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Tel: (416) 307-4007 / Fax: (416) 865-7048  
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**APPELLANT'S CERTIFICATE**

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. The evidence contained in the applicant's record and the respondent's record on the application made to the Superior Court in file 2089/15.

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Tel: (416) 307-4007 / Fax: (416) 865-7048  
Glenn Grenier LS#: 32272T  
Tel: (416) 307-4005 / Fax: (416) 865-7048**

**Lawyers for the Respondent  
(Appellant)**

- 2 -

TO: GARDINER ROBERTS LLP  
40 King Street West, Suite 3100  
Toronto ON M5H 3Y2, Canada

Ian Blue LS#: 14641J

Tel: (416) 865-2962 / Fax: (416) 865-6636

Anna Husa LS#: 45987L

Tel: (416) 865-6687 / Fax: (416) 865-6636

Lawyers for the Applicant  
(Respondent in appeal)

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Peter E.J. Wells LS#: 18002S  
Tel: (416) 307-4007 / Fax: (416) 865-7048  
Glenn Grenier LS#: 32272T  
Tel: (416) 307-4005 / Fax: (416) 865-7048  
Lawyers for the Respondent  
(Appellant)