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TO: Ian A. Blue and Anna Husa
Counsel for the Applicant **FAX No.:** 416-865-6636

Peter Wells, Glenn Gernier and Joanna Vavatu
Counsel for the Respondent **FAX No.:** 416-865-7048

FROM: Fiona Kelly, Judicial Assistant

DATE: June 30, 2016

RE: City of Burlington v. Burlington Airpark Inc.
Court File No.: 2089/15

COMMENTS: Please see the attached Reasons for Judgment of Justice Gibson dated June 30, 2016. Thank you.

NO. OF PAGES, including cover sheet: 31 pages
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CITATION: City of Burlington v. Burlington Airpark Inc., 2016 ONSC 4375
COURT FILE NO.: 2089/15
DATE: 2016-06-30

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
THE CORPORATION OF THE CITY OF)	
BURLINGTON)	Ian A. Blue, Q.C., and Anna Husa, for the
)	Applicant
Applicant)	
)	
- and -)	
)	Peter E.J. Wells, Glenn Grenier and Joanna
BURLINGTON AIRPARK INC.)	Vatavu, for the Respondent
)	
Respondent)	
)	
)	
)	HEARD: November 10,2015

REASONS FOR JUDGMENT

GIBSON J.

Nature of the Application

[1] The Respondent Burlington Airpark Inc. (“Airpark”) owns the Burlington Executive Airport (“the Airport”) which lies within the precincts of the City of Burlington (City).

[2] There has been an ongoing dispute between Airpark and the City with respect to fill operations conducted by Airpark at the Airport. Between January, 2008 and August 2013, Airpark allowed and profited from the deposit of over 500,000 m³ (approximately 2,000,000 tonnes) of fill at the Airport. On May 3, 2013 the City served Airpark with an *Order to Comply* (Order to Comply) with its *Topsoil Preservation and Site Alteration By-law, By-law 6-2003* (By-Law 6-2003). Airpark did not accede to the order and asserted that it did not need to comply because its fill operation was under federal, not provincial, jurisdiction.

[3] On November 13, 2013, Murray J. ruled against Airpark on the constitutional division of powers issue, and on June 11, 2014, the Court of Appeal for Ontario upheld this ruling.

[4] On September 22, 2014 the City repealed By-law 6-2003 and replaced it with an updated site alteration By-law (By-law 64-2014). Airpark refuses to comply with the City's site alteration By-law, contesting its validity and applicability. The City, however, says that the Order to Comply remained valid because s. 52 of *Part VI* of the *Legislation Act, 2006* preserved its validity.

[5] Airpark has also served a Notice and Amended Notice of Constitutional Question contending that By-law 64-2014 is unconstitutional because it seeks to regulate aeronautics and is unconstitutionally vague. The constitutional argument regarding federal jurisdiction over the aeronautics power is essentially the same one that Airpark made and in 2013 and 2014 with respect to By-law 6-2003. Concerning the vagueness argument, the City asserts that By-law 64-2014 is unmistakably clear in its wording, application, and requirements and is not vague.

[6] The City further asserts that its Order to Comply has been "contumaciously" ignored by Airpark. A significant amount of emotion now attends this dispute between the parties. The present application has its roots in the dispute that persists from 2013-2014 and is essentially a reboot of that litigation, with some additional fresh elements.

Order Sought

[7] Accordingly, the City seeks the two Orders set out in its Notice of Application:

- a) a mandatory order requiring the respondent Burlington Airpark Inc. ("Airport") to remove all fill deposited on the site between January 1, 2008 and August 2, 2013 except for soil underlying existing runways and hangars;
- b) in the alternative, a mandatory order requiring Airport to file an application under By-law 64-2014 for the 2008-2013 work carried out before By-law 64-2014 had been passed and while the prior By-law 6-2003 was in effect (the latter by-law having been since repealed in its entirety);
- c) an order continuing the terms of an order made by Miller J. on August 2, 2013 respecting the deposit of fill at the Airport;
- d) costs on a substantial indemnity basis; and,

e) further and other relief.

[8] Airpark, in contrast, seeks an order dismissing the City's application.

[9] For the reasons explained below, the City's application will be granted in part.

Facts

[10] The Airport is located in the northern part of City, which is rural in character. It lies north of Highway 407 between Appleby Line and Bell School Line. It covers 77.77 hectares and is within the *Protected Countryside Area* of the province's *Greenbelt Plan*. It is adjacent to the *Niagara Escarpment Plan Area*. The land uses immediately abutting the Airport are classified as agricultural and rural residential.

[11] The Airport was established in 1962. In 2006, the Airport was sold by its founding family to the current owner, Mr. Vincenzo Rossi (Rossi). At that time, the Airport lands west of the main runway were undeveloped and sloped away from the main runway.

[12] Airpark says that following the acquisition of the Airport in 2006, it has invested nearly \$4 million in improvements to the infrastructure of the Airport, including widening the main runway, paving the secondary runway, widening and adding new taxiways and building additional hangars, and improving run-up areas, fueling facilities and runway lighting. Among other things, the Airport provides a base for general and corporate aviation, a flight training school, Medivac/patient transfer flights and emergency organ transfer, search and rescue operations and charter flights. The Airport has several businesses located on site, including Kovachik Aircraft Services which services aircraft and provides many high skilled jobs, the flight school operator Spectrum Airways and AC Aircraft Refinishers. The Airport is also in regular use by Ontario Patient Transfer, the OPP, Union Gas, ORNGE, the Canadian Forces and others.

[13] The Airport and adjacent properties are within an area not serviced by municipal water or sanitary sewers. Agricultural property owners rely on wells on their properties for their drinking water.

[14] In January, 2008, Airpark commenced operating a fill site at the Airport. The City says Airpark did not inform the City that it was doing so or why. The City became aware of this fill operation in the fall of 2008 as result of adjacent landowner complaints.

[15] Airpark says that it began a program of levelling these western lands to bring them up to the same grade as the main runway. This would allow aircraft to safely taxi to and from the main runway to planned hangars, parking aprons, and a new terminal to be built on the western Airport lands. This required the importation of fill to bring the western Airport lands to within a one per cent slope of the main runway, in accordance with Transport Canada TP 312E (Aerodrome Standards and Recommended Practices).

[16] In late 2008 and in 2009, the owner of Airpark Mr. Rossi met with City staff several times about Airpark's fill operation. Mr. Rossi repeatedly made four statements. First, Airpark was not subject to By law 6-2003 because the Airport was under federal jurisdiction. Second, the fill being deposited at the Airport would be used for expansion of Airport features. Third, the fill was clean. Fourth, the fill operation would end in the summer of 2009.

[17] In March, 2013, the City began receiving a number of new landowner complaints about Airpark's fill operation. These concerned fill-grading activities at the Airport, drainage problems, noise, dust and traffic safety issues. Most importantly, landowners were concerned about the effects of the contaminants in the fill on their well-water.

[18] In May and June, 2013, City staff investigated these new complaints. The City staff found that:

- a) contrary to the position which Mr. Rossi had maintained in 2008-2009, Airpark's fill operation had not ended after the summer of 2009;
- b) Airpark's fill operation had deposited twice the amount of fill that in 2008-2009 Mr. Rossi had said would be deposited. At that time, he had said that approximately 250,000 cubic metres of fill would be deposited for Airport expansion purposes. By mid-2013 over 500,000 cubic metres of fill had been deposited;
- c) despite the amount of fill that had been deposited, Airpark had not built any new aeronautical facilities;
- d) in 2008-2009, Mr. Rossi had assured the City that the fill was coming from a Ministry of Transportation project at Bronte Road and had been

tested. Sometime after 2009, Airpark began selling tickets and accepting fill from projects all over the Greater Toronto Area;

- e) in 2009, Airpark told City staff that it had hired an independent manager of the fill operation. In 2013, City Staff learned that King Paving, which was the main fill-hauler, was also managing the fill operations at the Airport. City staff considered that this duality put King Paving in a conflict of interest position; and
- f) properties abutting the Airport were experiencing drainage problems due to significant grade and slope changes at the Airport boundary line caused by the fill operation.

[19] As a result, the City concluded that Airpark was allowing the deposit of fill as a commercial activity and not for a planned expansion of aeronautical facilities at the Airport.

[20] On May 3, 2013, the City issued its Order to Comply requiring Airpark to obtain a Site Alteration Permit for its ongoing fill operation and to do so by May 13, 2013.

[21] Airpark did not comply with the Order to Comply. On May 13, 2013, the City issued a Violation Notice, notifying Airpark that it was in breach of the Order to Comply and in violation of By-law 6-2003.

[22] On July 17, 2013 Airpark commenced an Application to prohibit the City from enforcing By-law 6-2003 against it and the Airport.

[23] On July 30, 2013 the City commenced a Counter-Application for a declaration that the City's Bylaw 6-2003 was valid and binding upon Airpark and the Airport in respect of Airpark's fill activities at the Airport.

[24] On August 2, 2013, Miller J. ordered that both applications should be heard together, and endorsed the record as follows:

1. Burlington Airpark Inc. will not bring any fill on its land other than gravel and paving grindings for runway base only and not to be mixed with other fill and asphalt for paving to allow completion of the runway widening and taxi ways; and,
2. These terms will continue to apply until the disposition of this application.

[25] On November 13, 2013, Murray J. dismissed Airpark's Application with costs and ordered and declared that the City's By-law 6-2003 was valid and binding upon Airpark and the Airport (2013 ONSC 6990).

[26] On November 15, 2013 Airpark appealed to the Court of Appeal for Ontario (Court of Appeal). The Notice of Appeal asked that Justice Murray's judgment be set aside and for declarations that By-law 6-2003 did not apply to Airpark's fill operation and that the City's Order to Comply was null and void and of no legal effect.

[27] On June 13, 2014 the Court of Appeal dismissed Airpark's appeal (2014 ONCA 468). Airpark chose not to seek leave to appeal this dismissal to the Supreme Court of Canada.

[28] Between the dismissal of Airpark's appeal on June 13, 2014 and September 22, 2014, the City, on three separate occasions, requested Airpark to file an application for a Site Alteration Permit respecting all fill that had been deposited on the site since January, 2008. Airpark refused to file such an application.

[29] On September 22, 2014 the City repealed By-law 6-2003 and replaced it with By-law 64-2014. The new by-law contained materially the same provisions found in By-law 6-2003, but in an updated form. The City informed Airpark that it would waive the higher fees under the new by-law for its application.

[30] Between September 22, 2014 and April 20, 2015, the City, on six separate occasions, requested Airpark to file an application for a Site Alteration Permit respecting all fill that had been deposited at the Airport since January 1, 2008. Airpark again refused to file such an application.

[31] There is a great deal of material adduced in this application pertaining to the purported contamination of the fill. By-Law 64-2014, however, is not only concerned with contaminated fill but also with many other site alteration issues. These include drainage and slope-stability problems, unauthorized destruction of trees, loss of agricultural land, detriment to fruit trees, crops, vegetables, and sight-lines of adjacent properties. The City's concern with Airpark's refusal to comply with By-law 64-2014 is about all these other issues as well.

[32] The Site Alteration Application Process described in s. 4 of By-Law 64-2014 requires an applicant to have a pre-consultation meeting with the Executive Director and possibly other persons and agencies to discuss the permit requirements on a preliminary basis. The applicant is then required to pay a fee and submit:

- a completed application form, setting out the information required under s.4.04.01.
- a Control Plan, setting out the proposed property lines of the land where the site alterations are to be undertaken, the current and proposed use of the site, a detailed location for the placement of the fill, the location of environmentally sensitive areas, the locations and dimensions of utilities, roadways and highways and other information as required in s. 4.04.02; and
- additional supporting documentation, as may be required by the Executive Director, in accordance with s.4.06. Such supporting documentation may include any other study, report plan, drawing, Environmental Site Assessment Reports, certification that the fill at issue contains no contaminants within the meaning of the *Environmental Protection Act*, and other information and documentation or material related to the application that the Executive Director may deem necessary.

[33] In reviewing the application, the Executive Director may seek the input and approval of other parties, such as the Ministry of Natural Resources, the Department of Fisheries and Oceans, Conservation Halton, adjacent municipalities, and Others.

[34] Similarly, the Executive Director may, and regularly does, engage engineers, hydrogeological, hydrology, environmental and other specialized consultants to evaluate the risks and benefits to the City of a proposed site alteration application.

[35] Section 6.01 provides that a Site Alteration Permit shall be issued where the Executive Director is satisfied that the conditions in s. 6.01 have been met. These include that the applicant has complied with or will comply with the requirements of the by-law, that the proposed placing, dumping or removal of fill will not result in adverse consequences (flooding, contamination, injury to trees, quality or quantity of water in wells, etc.) that the fill is clean and free of any glass, plastics, metals or contaminants exceeding applicable site condition standards and that environmental soil testing of fill has been undertaken by a Qualified Person, as defined under the *Environmental Protection Act, RSO 1990. c. E-19*.

[36] The process leading to the issue of a Site Alteration Permit is a thorough one that depends on the review, assessment and advice of a team of professional engineers, planners, lawyers and other types of consultants who have a particular expertise and experience to contribute. City staff decides whether or not to issue a permit. City Council decides any appeal from City staff's decision.

[37] Ontario *Regulation 153/04, Records of Site Condition - Part XV.1 of The Act* is the regulation applicable to receipt of fill material at the Airport. Based on this regulation, only materials meeting the Table 2 Site Condition Standards (SCS) listed in Ontario's *Soil, Groundwater and Sediment Standards for Use Under part XV.1 of the Environmental Protection Act*, MOE, April 15, 2011 are appropriate for use as fill at the Airport, with Table 1 SCS suitable for use at localized areas of the site proximal to surface water bodies or environmentally sensitive or significant areas.

[38] Notably, some contaminants are present in the fill material at the Airport regardless of which SCS Table is considered applicable. Contaminants which the City says are present in the fill include petroleum hydrocarbons in the F1, F2, F3, and F4 fraction ranges, antimony, lead, zinc, copper, cadmium, cyanide, acenaphthylene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, fluoranthene, indeno(c)pyrene, and/or naphthalene.

[39] Airpark's own soil and groundwater testing and Site Specific Risk Assessment for the Airport showed concentrations and Table 2 exceedences of copper, benzo(a)pyrene, zinc and lead that were either at the same level or higher than the levels of concentrations the City's consultant had analyzed. These sample concentrations can be found anywhere in the fill, including within thirty meters of Bronte Creek. There is also a risk that there is cyanide in the fill because the recorded detection limit of the testing equipment for cyanide was higher than the Table 2 standard.

[40] All fill zones at the Airport are up gradient of off-site wells used for drinking water, which means that any contaminated groundwater from the site flows towards those wells.

[41] The City says that there are risks to human health and ecological receptors from the on-site petroleum hydrocarbons, on-site metals, and on-site polycyclic aromatic hydrocarbons in the fill deposited at the airport, absent application of risk management measures (RMM).

[42] Airpark however has not developed specific RMMs in detail for the Airport nor has it committed to implement such RMMs. The City contends that the presence of contaminated fill material at the Airport site continues to threaten surrounding agricultural and residential lands with adverse effects.

[43] Airport planners distinguish between features on an airport property which are required by aeronautical regulations and additional features which are what are known as “industry best practices”, i.e. “nice-to-haves” beyond legal requirements. The City contends that there is no evidence of any small Airport in Ontario that has Airpark’s wished-for industry best practice of a three per cent slope next to the Transport Canada- required strip running alongside its runway. The City submits that if the Court were disposed to order Airpark to remove fill, therefore, it could order the removal of all the fill not under runways, taxiways, strips and hangars, without affecting any transport Canada requirement.

[44] There are no signed agreements by which Airpark has committed to establish aeronautical features south west of Runway 14/32, an area that has received a large amount of fill.

[45] The evidence indicates that King Paving has all the necessary equipment and the ability and expertise required to remove the fill from the Airport, if fill removal is ordered.

The City’s Position on the issues and the law

[46] Airpark’s position (outlined in greater detail below) is that because By-law 64-2014 contained no provision that continued the then-existing proceedings, once it came into force Airpark was released from the May 3, 2011 Order to Comply and the May 13, 2011 *Violation Notice* under By-law 6-2003. The City vigorously disagrees.

[47] The City submits that By-law 64-2014 did not require a provision that continued proceedings commenced under By-law 6-2003, because the City can rely upon s. 52 of the *Legislation Act, 2006* which continued them automatically.

[48] The City submits that the definition of “regulation” within the definition of “legislation” in Part I and in s. 46 of Part VI of the *Legislation Act*, includes municipal by-laws, and that therefore s. 52, applies to municipal by-laws. The City further submits that s. 52 applies to both the repeal of By-law 6-2003 and its replacement by By-law 64-2014.

[49] The City’s position is grounded in the proposition that the By-laws are legislative in form. First, it submits, By-law 6-2003 was, and 64-2014 is, *intra vires* s. 142 of the *Municipal Act* which empowers the City to prohibit or regulate the placing or dumping of fill on sites within the City. These By-laws were and are laws of general application made in good faith and in the public interest. When acting within those limits, the City is vested with plenary legislative power as large and of the same nature as those of the Legislature itself.

[50] Second, the City submits, the Supreme Court of Canada has moved away from “Dillon’s Rule” that municipal by-laws should be strictly construed to ensure they are not *ultra vires*. Today, courts favour a “benevolent construction” or “broad and purposive” approach to municipal by-laws. This approach requires a generous interpretation of municipal powers, in order to show deference to and respect for the decisions of locally elected officials. The “benevolent construction” and “broad and purposive” approach to By-laws 6-2003 and 64-2014 requires that the rules of interpretation in part VI of the *Legislation Act, 2006*, including s. 52, should apply to them in order to ensure that they are effective.

[51] Third, the City submits that there is no contrary legislative intent. There is no provision in the *Legislation Act, 2006* that suggests the rules in Part VI of the *Legislation Act, 2006* do not apply to municipal by-laws. The *Act* is an amalgam of the old *Interpretation Act*, the old *Regulations Act*, and new rules about “source-law” on the Ontario e-laws website. It is divided into seven parts of which two are relevant to this Application, Parts I and VI. Section 1 of Part I, defines “legislation” to mean “Acts and regulations”.

[52] The City observes that there is no definition of “regulation” in Part I or VI. The Act does not define what is and what is not included in the term “regulation” in either Part I or Part VI, which contains the time honoured rules of statutory interpretation, including s. 52. The word “regulation” is wide enough to include a municipal by-law because such a by-law, like a regulation made under a statute, is a form of delegated legislation.

[53] “Regulation” is more specifically defined in the definition of “source law”. Within “source law”, a “regulation” means a regulation as filed with the Registrar of Regulations under Part III-Regulations of the *Legislation Act, 2006* or under a predecessor of that Part 52. This specific definition of “regulation” for source law purposes is necessary in order to define what laws the Attorney-General is responsible for publishing in e-laws and in printed form.

[54] “Regulation” is also defined for publication purposes in s. 17(a) of Part III of the *Act* entitled “Regulations” as expressly excluding “a by-law of a municipality or local board as defined in the Municipal Affairs Act”. This exclusion however, is stated to be only for the purposes of Part III. It is necessary because the Attorney General does not publish municipal by-laws on the e-laws website or in printed form. Instead, municipalities themselves do so under s. 253 of the *Municipal Act, 2001*. By excluding municipal by-laws from the term “regulation” in Part III of the *Legislation Act, 2006* only, and not elsewhere in Act, the Legislature should be taken to acknowledge that “regulation”, used generally in the Act, includes municipal by-laws.

[55] Section 49 of the *Act* says that only specifically enumerated provisions of Part VI apply to a “‘document’ that is made under an Act and is not a regulation. Section 52 is not among those specifically enumerated provisions. Since a municipal by-law falls within the general definition of regulation, a municipal by-law cannot be a “document” because a “document” cannot be a “regulation”. When in s. 49 it was restricting what Part VI applied to, the Legislature did not expressly include “a by-law of a municipality” in the restriction. By having done so in Part III and not doing so in Part VI, the Legislature showed that it did not intend to exclude municipal by-laws from the application of Part VI.

[56] Fourth, the City submits, Canadian courts have held that statutory bodies have power to do things by necessary implication, without an express authorizing statutory provision. The doctrine of authority by necessary implication exists to grant power to statutory bodies to provide

them with the necessary jurisdiction to carry out their statutory mandate. A Municipality is such a statutory body.

[57] In cases where powers are not expressly conferred by municipal by-laws but may be implied, courts must be prepared to adopt a "benevolent construction" and confer the powers by necessary and reasonable implication.

[58] Accordingly, the City submits that by necessary implication the term "regulation" used in the definition of "legislation" in Part I and the term "regulation" in s. 46 of Part VI of the *Legislation Act, 2006* must include municipal by-laws. Only by so interpreting the term, it says, can municipal by-laws be truly effective.

Notice of Constitutional Question

[59] Airpark has served a Notice and an Amended Notice of Constitutional Question arguing that By-law 64-2014 is unconstitutional because it seeks to regulate aeronautics and is unconstitutionally vague. The aeronautics argument is the same one that Airpark made in 2013 and 2014 and lost regarding By-law 6-2003. The City contends that neither By-law 6-2003 nor the fill removal order sought will affect aeronautical activities. The order sought would require that Airpark remove the fill not underlying runways, taxiways, the transport Canada required strip and hangars. It has been the City's consistent position throughout that it has no intention of interfering with aeronautical activities at the Airport.

[60] The City submits that Airpark is estopped from making its constitutional argument under the rules of issue-estoppel. The preconditions to the operation of issue-estoppel are that the same question has been decided, that the judicial decision which is said to create the estoppel was final, and, that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies. By-law 6-2003 and By-law 64-2014 are materially the same. Therefore, as between the City and Airpark, the City says, the answer to each of the above three questions is affirmative.

[61] The City also argues, in the alternative, that By-law 64-2014 is constitutional and does not seriously and significantly intrude on federal jurisdiction over aeronautics. The appropriate test for whether Airpark is immune from the By-law on the grounds of interjurisdictional

immunity requires the court to answer two separate questions. First, does the By-law trench on Parliament's core jurisdiction over aeronautics? Second, if so, does it significantly or seriously intrude upon that core jurisdiction?

[62] The purpose of By-law 64-2014, the City contends, is to manage sites within the City receiving fill and to prevent the use of toxic or contaminated fill, not to prevent or control airport development. Nothing in it purports to regulate the design, construction or operation of runways, aprons, taxiways, terminals, hangars, airport buildings, or other airport facilities or purport to control aeronautical operations. By-law 64-2014, therefore, does not trench upon core federal aeronautics jurisdiction.

[63] In addition, federal works and undertakings within a province are usually subject to provincial laws of general application. Merely because some provision of a provincial law might be viewed as regulating the federal undertaking would not render the law inapplicable if, taken as a whole, the law is aimed at a subject within provincial jurisdiction.

Vagueness

[64] The legal test of vagueness, the City submits, is whether a reasonably intelligent person could determine whether or not he/she is in violation the by-law. The by-law must be clear enough that citizens can know what behaviour is impermissible under the by-law. The object of the exercise is to decide whether the law is sufficiently clear to allow a citizen to understand it in order to comply with it. Courts are generally reluctant to find that by-laws or other statutory provisions should be struck on the grounds of vagueness or uncertainty. Courts must always endeavour to give a reasonable effect to a by-law, and it is only when this is impossible that a by-law should be declared vague.

[65] By-law 64-2014 applies to all lands within the City except those subject to regulations under s. 28(1) of the *Conservation Authorities Act*. Section 2.02 contains a clear prohibition with respect to "fill", which is defined as "any type of material capable of being removed from or deposited on lands, including topsoil", unless a Site Alteration Permit is obtained or the By-law does not apply or a permit is not required. Section 3 describes in detail the lands which are exempt from the By-law. Section 4 then describes the permit application process, while s. 5 specifies when a "Site Alteration Agreement" must be obtained. Section 6 describes the permit

issuing process, specifying, among other things, criteria for the Director to consider before being satisfied that a permit should be issued and setting out the conditions that the Director may attach to the permit. The remainder of the By-law deals with expiry, renewal, revocation and transfer of permits, powers and rights of inspection, appeals to Council, orders and notices, offences and penalties, and fees and security.

[66] There is nothing in By-law 64-2014, the City says, that raises serious uncertainty as to whether it applies to Airpark or whether it applies to the site alteration activities Airpark has carried on at the airport.

Fill Removal Order

[67] The City requests a mandatory order to remove the contaminated fill from the areas not underlying aeronautical facilities at the Airport in order to minimize risk to human health and the natural environment at the Airport and surrounding properties.

[68] The City declares that the order is necessary in order to enforce By-law 64-2014.

[69] The City invited Airpark to provide an estimate of the cost of removing the fill for the Court to consider in exercising its discretion, but Airpark declined to do so.

[70] The City contends that there also has been no injustice to Airpark because the City's May 3, 2013 Order to Comply stated clearly what should be done and not done. It expressly required Airpark to stop site alterations immediately and to apply for a Site Alteration Permit for the Airport as of May 13, 2013. Airpark had actual notice of the May 3, 2013 Order to Comply. Despite Justice Murray's Order of November 13, 2013, and the Court of Appeal for Ontario's decision of June 11, 2014 that the City's By-law 6-2003 applied and that the Order to Comply was valid, Airpark declined to apply for a Site Alteration Permit for all of the fill that it had allowed to be deposited at the Airport.

Airpark's View of the Facts

[71] Airpark takes a significantly different view of many of the relevant facts. In February 2009, the Airport conducted an open house for its neighbours and City officials to inform them of the Airport's plans which eventually resulted in a report dated May 6, 2009 by City Staff that