

Air Park lawyers threaten to sue for libel – Gazette considering its options.

[G**urlingtongazette.ca/air-park-lawyers-threaten-to-sue-for-libel-gazette-considering-its-options**](http://www.burlingtongazette.ca/air-park-lawyers-threaten-to-sue-for-libel-gazette-considering-its-options)



By Staff

April 22, 2014

BURLINGTON ON

We received the following recently.

Burlington Gazette

Burlington, Ontario

Dear Sirs:

Re: Burlington Airpark Inc. -Libel Notice to Burlington Gazette

We are the solicitors for Burlington Airpark Inc., the operator of the Burlington Executive Airport (collectively “Airport”). This letter is to serve as notice pursuant to s. 5(1) of the Libel and Slander Act R.S .O. 1990 Chap. L.12.

Under the date of April 11, 2014 the following appeared on the website [http://www.burlingtongazette .ca/](http://www.burlingtongazette.ca/):

“Was it the cold winter that resulted in hundreds of dead fish floating on the pond of the Appleby Line property that is surrounded on three sides by the Air Park land fill or is the death of the fish the result of toxic and silt filled water now in the pond?”

The argument as to whether the land fill was going to do any real damage has been simmering in the background. Some testing was done but the

A spring fed pond with hundreds of fish – normally. Today wasn’t a normal day on the Appleby Line property. Hundreds of dead fish were floating n the water this morning

Ministry of the Environment got involved in a struggle over who was entitled to the information from their testing results -privacy issues came into play and the privacy officers at every level of government seem to be taking the time they feel they needed to determine just who can see what.

The spring fed pond is yards away from a mountain of landfill that was never properly tested when it was dumped on the property.

Runoff from the landfill is now getting to the water table -dead fish are showing up in the pond.

Some of the evidence may have come to the surface – literally, for one resident. Hundreds of dead fish were found floating on her pond this morning . That pond is yards away from a 30 foot high pile of landfill that is in place in violation of the city’s site alteration bylaw.

The property owner advises that the Ministry of the Environment will be on her property later today to test for contamination in the pond.”

These publications are false and misleading in at least the following respects:

1. The soil was tested. Results to date in 2009 were reviewed by Region of Halton which reported to the City of Burlington: “The results for all criteria meet the Regional and Provincial standards (potable) as required in Table 2 of the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act.”
2. The Airport is not contaminating the groundwater. Multiple tests by Environment Canada, the Ontario Ministry of the Environment (“MOE”) and Halton Region have shown no impact on groundwater.
3. When the City of Burlington reported the results of the Halton Region testing of wells on properties bordering the Airport in its Burlington Executive Airport Update #6- September 9, 2013: “On August 23, city staff were sent an email by the Region of Halton regarding testing of wells on several properties adjacent to the airport. The email indicated that the MOE and the Halton Region Health Department were working together to sample and analyze the drinking water wells of homes located immediately adjacent to where the fill was placed on the airport site. Well water samples were collected by MOE staff from two properties. The samples were being analyzed for inorganics, volatile organic compounds, polycyclic aromatic hydrocarbons and petroleum hydrocarbons.

Results of this testing were provided to the Health Department. The results were then compared to the health-based Ontario Drinking Water Quality Standards and the Ministry of Environment Table 2 Brownfields standards. The Region has indicated that no exceedances were reported. These results have been shared with the property owners. Permission was given by these property owners for the Health Department to share the results with city staff.”

4. These results were also discussed at the Burlington Development and Infrastructure Committee meeting on September 9, 2013 where it was reported: “On to Environmental matters on page 3 -the well testing. You can see the correspondence that’s come in from your CEO over at the Region of Halton. That work is being done in co operation with the Health Unit. That’s flowing through the good Doctor [Nosal], so the results will , continue; they have been shared with the property owners and the Health Department and we’ll get that information as it comes forward. Nothing negative at this stage and that is not unusual to see that there isn’t anything negative that would migrate from the site and be into any wells anyway, at this stage.”

The publication was actuated by malice justifying an award of punitive or exemplary damages, in that you caused these words to be published knowing them to be untrue, or being reckless as to their truth. In particular the Airport will rely on:

1. The publication of an article dated April 9 2014 reporting on the filing of nomination papers by Vanessa Warren. The article, when fairly read, is an endorsement of her candidacy. The article repeats earlier defamatory claims that the Airport was importing “toxic landfill” and was running an “unlicensed landfill operation”. Both these allegations are untrue. The July 16, 2013 article in which these claims were made is still available on the Burlington Gazette website, and the Airport claims with respect to these statements as well having been made less than one year prior to April 11, 2014.

2. The Burlington Gazette reported on the testing of neighbouring wells on August 5, 2013. This report is also inaccurate in claiming that the Terrapex study established that any contaminants were migrating from the Airport property. Terrapex did not comment on off-site impacts as that was not part of the scope of work assigned to it by the City of Burlington. In addition, it had not done any testing that would have been required to comment on off-site impacts. The August 5, 2013 article in which the false claim that the Terrapex report was evidence of off-site impacts by the Airport is still available on the Burlington Gazette website, and the Airport claims with respect to that statement as well, having been made less than one year prior to April 11, 2014. Nevertheless , as a result of the reports by the City as set out in paragraphs 3 and 4 above, you knew or ought to have known that the tests of neighbouring wells showed no adverse impact due to the Airport and that the City of Burlington had advised the community that there wasn’t anything negative that would migrate from the site and be in any wells anyway. The failure to report these results was selective reporting intended to maintain the fiction that the Airport land was adversely impacting the neighbours, when the tests specifically performed to determine whether that was so were to the contrary.

Our instructions are to pursue legal proceedings unless the defamatory statements in the articles of April 11, 2014, July 16, 2013 and August 5, 2013 are retracted and a full and fair apology satisfactory to our clients is published in the same fashion and in an equally prominent way as the statements specified in this notice.

The notice was signed by Peter West, solicitor for Air Park Inc., carrying on business at the Burlington Executive Air Park. The Air Park is currently in litigation with the city. The cases were first heard at the Ontario Superior Court in Milton where Justice Murray found for the city. The Air Park immediately filed an appeal that is to be heard in Toronto June 11, 2014

Background links:

[April 14, 2014 article](#)

[July 15, 2013 article](#) [July 16, 2013 article](#) [August 5, 2013 article](#) [April 11, 2014 article](#) [Libel chill](#) [Justice Murray decision](#)

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