

# Burlington Gazette

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<http://burlingtongazette.ca/when-you-know-what-the-rules-are-it-is-a-lot-easier-to-play-the-game-air-park-situation-takes-on-a-different-look/>

**When you know what the rules are, it is a lot easier to play the game. Air Park situation takes on a different look.**



By Pepper Parr

BURLINGTON, ON.

January 12, 2014.

The legal tussle over what can be done at the Burlington Executive Air Park is one of a number of “issues” the city’s Solicitor has to deal with. The argument with the owners of the Air Park hinges on whether or not they have to comply with municipal by laws. City says they must, Air Park says they are federally regulated and they don’t have to concern themselves with the city’s rules.

The Air Park got away with those arguments for a number of years, as far back as 2006 when Vince Rossi took over the operation and brought some pretty big ideas to the table.



Vince Rossi, president of the Burlington Executive Air Park and believed to be the sole shareholder of the private company, met with north Burlington residents. He took all the comments made “under advisement”..

No one questioned Rossi’s argument – everyone seemed to take it as face value – for which there should be red marks placed on their copy books.

It was when Vanessa Warren, chair of the newly formed Rural Burlington Greenbelt Coalition delegated to the city and the Regional Council that people at the political level began to ask serious questions.

Whenever there is a political issue the bureaucrats at every level perk up and pay attention.

General manager Infrastructure and Development, Scott Stewart, the man holding the Air Park file, has been trying to get some traction with the Ontario Ministry of the Environment (MOE) over the matter of the landfill that has been dumped at the Air Park site and testing for just what is in the ground up there. Vanessa Warren called the place an “unlicensed land fill” – the city wants to know what that landfill is made up of and the impact it might have on the ground water.

It has been an uphill climb for the city but they are now meeting with the MOE person who wrote the regulations which Stewart says is very useful. “We want to know more about the Ministry’s intent when they wrote the regulations” said Stewart.



That culvert is leaching out water from a 30 foot pile of land fill which no one can say with much certainty where it came from. Property owners in north Burlington draw their water from wells.

What the city needs is a more cooperative relationship from the province on the fill that is on the property and the impact it may have on ground water. It also wants a better working relationship with the federal department of transport who regulate airports.

A recently released Advisory Circular from the federal transportation department appears to suggest that they are beginning to realize that municipalities do have a place at the table and that their bylaws need to be obeyed.

The document sets out for federal bureaucrats what means what and who the players are and something on their role. It suggests municipal governments have a role to play on what happens at an Air Park as long as they don't intrude on the actual landing and taking off of an aircraft.

Some of that language used in the Advisory is interesting and very relevant to Burlington and the situation it finds itself in. While the document is lengthy – the complete document location is shown below, there are several sections that are very relevant.

“There has been considerable discussion on the definition of an “aerodrome” and the application of federal, provincial and municipal laws at aerodromes. The purpose of this document is to provide guidance for TC officials and others on land use issues and jurisdictional matters surrounding aerodromes.

“This document applies to Transport Canada Civil Aviation (TCCA) personnel, delegates, the aviation industry, provincial and municipal authorities and the public.

It is intended that the following reference materials be used in conjunction with this document:

- (a) *Aeronautics Act* (R.S.C., 1985, c. A-2);
- (b) Part III, Subpart I of the *Canadian Aviation Regulations (CARs) — Aerodromes*;
- (c) Part III, Subpart II of the CARs — *Airports*; and
- (d) Part III, Subpart V of the CARs — *Heliports*.

## Definitions and Abbreviations

The following definitions are used in this document:

(a) “**Aerodrome**” means any area of land, water (including the frozen surface thereof) or other supporting surface used, designed, prepared, equipped or set apart for use either in whole or in part for the arrival, departure, movement or servicing of aircraft and includes any buildings, installations and equipment situated thereon or associated therewith.

(b) “**Airport**” means an aerodrome in respect of which a Canadian aviation document is in force;

(c) “**Certified**



The owner of a property on Appleby Line stands at her property line. Plans submitted to the Region at one point had a large helicopter pad sitting atop the 30 foot pile of earth. The owner of the property on which the heliport was to be built claimed he did not have to get site plan approval from Burlington. A Judge disagreed with him. That decision is being appealed.

**Aerodrome**” for the purpose of this document, means airport, heliport or water airport; and

(d) “**Helicopter**” means an aerodrome in respect of which a helicopter certificate

## BACKGROUND

(1) Under Canada’s Constitution, the federal government has jurisdiction over aeronautics, including aerodromes. This is expressed through the *Aeronautics Act*. Transport Canada’s role as regulator is to verify that aerodrome operators comply with the *Canadian Aviation Regulations* (CARs). The CARs pertaining to aerodromes are focused on aviation safety. The federal government is not involved in private property issues.

(2) The *Canadian Aviation Regulations* (CARs) distinguish among three types of aerodromes:

(a) Certified Aerodromes: (airports and heliports) are those with scheduled service or which are located within built-up areas or are certified in the public interest.

(b) Those that are registered – those aerodromes that are published in the CFS or WAS where information, such as, location, physical characteristics, specific approaches, services, etc. is provided; and

(c) Those aerodromes which are neither certified nor registered.



It is construction like this, being done without city site plan approval that has Burlington involved in what will probably prove to be a protracted court case.

(3) Recently the Department has been dealing with issues surrounding the development of aerodromes and aerodrome operators/developers expressing the belief that the *Aeronautics Act* makes compliance with provincial legislation and

municipal by-laws unnecessary. Questions have arisen respecting the use of contaminated fill, paint fumes, the improper disposal of solvents and paints in local drainage system, the building of hangars, etc. and the application of provincial and municipal laws to these activities.

(4) It has consistently been the Department's position, which has been supported by jurisprudence, that activities and structures at an aerodrome that are integral to aviation cannot be impaired by provincial or municipal laws. In circumstances other than these, valid provincial, municipal or territorial law may apply to an undertaking or activity that is conducted or occurs at an aerodrome or to a structure that is built at an aerodrome.

(5) Two recent decisions from the Supreme Court of Canada (Lacombe and COPA) confirm and clarify the federal jurisdiction over aeronautics.

(6) These decisions do not change the way the Department regulates aerodromes, nor do they require Transport Canada employees to give advice to air operators regarding the implications of the cases, or the application of provincial or municipal bylaws in the context of an aerodrome operation. The decisions do not preclude the application of a valid provincial, municipal or territorial law. The *Aeronautics Act* does not grant immunity to an aerodrome operator/developer from compliance with all other valid applicable provincial legislation or municipal bylaws.

(7) There was another decision handed down in May 2011 in the Ontario Provincial Court concerning a proposed aerodrome in the Township of Scugog. This decision was a prime example of how provincial or municipal laws could apply to activities at an aerodrome. In the Scugog case, an aerodrome operator used a substantial amount of landfill to construct a runway. The township issued a revocation order and a stop work order with respect to the fill activity. In this case, the town's by-laws were found to be valid and applicable to an aerodrome. Transport Canada's position with respect to the applicability of provincial or municipal laws has been consistent with the Scugog decision in that the jurisdiction of the federal government over aerodromes and their operation does not necessarily exclude the application of provincial or municipal laws.

(8) For those structures or activities that are determined **not** to be integral to aviation, **it is expected that the proponent of an aerodrome comply with all applicable provincial legislation and municipal by-laws. It is expected that the proponent comply with all applicable federal legislation regardless of whether or not structures or activities are integral to aviation.**

(9) Standards Branch has developed a document providing guidance on the definition of an "aerodrome".

## **REGULATORY REQUIREMENTS FOR AERODROMES**



(1) **Certified Aerodromes:** Specific regulatory provisions which apply to aerodromes include CAR 302 for airports and CAR 305 for heliports.

(a) Meeting technical standards that include physical characteristics, obstacle limitation surfaces and visual aids for navigation, to name a few.

(b) Additional considerations dealing with wildlife management, rescue fire fighting, emergency planning and security, airside vehicle operations and safety management systems.

Regulatory requirements for those aerodromes that are not certified include CAR 301, and;

(a) The Minister may refuse to register an aerodrome where the operator of an aerodrome does not meet the requirements of sections 301.05 to 301.09 or where using the aerodrome is likely to be hazardous to aviation safety. In such a case, the Minister will not publish information with respect to that aerodrome and the aerodrome will not be registered.

## **RECOMMENDATIONS**

- (1) The Department recommends that an aerodrome operator/developer consult with local land use authorities prior to establishing an aerodrome and seek the necessary legal advice on compliance with the applicable laws. **Any question, concerns or clarification respecting the application of law, division of powers, or jurisdictional issues should be directed to a lawyer.**

Had this document been available to the bureaucrats at both the Regional and city levels there is reason to believe that the court case the city is involved in would not be on the Court Calendar.

The wheels of justice grind slowly – but they do move.