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Scugog launches \$105 million lawsuit to cover costs of cleaning up Greenbank airport site

GFL Environmental Inc, associates named in Township's counterclaim to airport's \$10 million lawsuit



Greenbank Airways site

Benjamin Priebe / Metroland

SCUGOG -- Councillors are pondering their next move after the Township received a report of contaminated soil at the Greenbank Airways site, located on Regional Road 47 near Greenbank. May 5, 2015

Port Perry Star

By [Chris Hall](#)

SCUGOG -- Scugog has filed a \$105 million lawsuit against GFL Environmental Inc. and others associated with the controversial Greenbank airport site in a bid to cover the costs of cleaning up a property the Township claims has been left contaminated as a result of illegal dumping.

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The Township filed the lawsuit in the Ontario Superior Court of Justice on March 3, a statement of defence and counterclaim to a \$10 million lawsuit brought forward against Scugog by airport officials late last June.

Scugog announced in a press release late Tuesday afternoon that it had filed a response to the airport's lawsuit.

The counterclaim lists GFL Environmental Inc., a Toronto-based environmental services company with an office in Pickering, its chief executive officer Patrick Dovigi and the numbered company 2307880 Ontario Inc. as defendants. Also listed in the counterclaim as defendants are Robert Munshaw, who also has been linked to ownership ties with the airport, and former airport manager John Packer.

D.L. Services, the Brighton-based company hired by the airport to police soil shipments, company founder Douglas LeBlanc and another D.L. Services employee, Kevin McClintock, who was charged with overseeing the soil screening, according to the Township's countersuit, are also included as defendants.

In the Township's counterclaim, Scugog estimates it will cost \$100 million to remove the contaminated soil and prohibited materials from the property and then restore the airport lands.

"The people responsible, whoever they may be, have left the Township with a big mess," said Charles Loopstra, Scugog's lawyer, in an interview on Tuesday evening. "The Township issued orders to conduct a clean-up and those orders were ignored and (the Township doesn't) have the money to do the clean-up themselves."

Added Loopstra: "The Township is saying that if they have to (clean-up the site), the worst-case scenario is they'll have to spend \$105 million. That is a lot of money and there is a lot of fill there."

He added that airport officials also filed a jurisdictional court challenge along with their lawsuit last summer, claiming the Township's site-alteration bylaw does not apply to a federally-regulated aerodrome. The Township's focus was on addressing that matter before turning to a countersuit, said Loopstra, explaining the delay in filing the counterclaim.

When reached on Tuesday evening, Munshaw, who is listed as dealing with corporate development at National Waste Service/GFL, scoffed at the lawsuit.

"Anybody can sue anyone for any amount," he said. "We will see how things go in court."

Contrary to the Township's claims the airport site "appears abandoned," Munshaw said there are still planes flying in and out of the Regional Road 47 site. There is no ongoing construction or current efforts to remediate the property, he confirmed.

"There are too many opinions out there that are wrong and negative and it's very unfortunate how some groups of people responded to this whole thing," said Munshaw.

Phone calls and emails to Dovigi and LeBlanc on Tuesday night were not immediately returned.

Scugog Mayor Tom Rowett referred questions to Township spokeswoman Lori Bowers, who did not respond to an email Tuesday night.

Essentially, Scugog alleges that there was illegal dumping at the airport, officially known as Greenbank Airways, from 2012 to 2015.

Soil samples that exceeded acceptable levels were discovered at the airport site in the spring of 2015 after the Township carried out borehole tests. That prompted the Township to halt all soil shipments to the site. Those random samples, said Scugog at the time, "discovered that a considerable amount of contaminated soils and prohibited materials had been imported to the Greenbank site in contravention of the site alteration agreement it entered into with the Township."

In response to those allegations, airport officials stressed the Township had already been informed of the locations of the exceedances in advance of the tests.

Following those tests, the Township says it advised airport officials they should cease fill operations and undertake remediation to eliminate all contaminated fill.

"In particular, DLS, LeBlanc and McClintock knew or ought to have known that the majority of audit samples that returned unacceptable results were taken from fill sourced from the GFL soil recycling facility, but they failed to take any steps to ensure that fill exported from the GFL soil recycling facility was in compliance with the site alteration agreement" signed between airport officials and the Township, alleged Scugog in the lawsuit.

Last year, Scugog issued a Municipal Act Order requiring full remediation based on a Township-approved remediation plan as well as payment of outstanding fees, but so far no remediation has taken place, says Scugog.

"The Township of Scugog has been left high and dry to deal with this situation," said Paul Allore, Scugog's chief administrative officer, in the April 18 press release. "Considerable funds have been expended to retain environmental engineers, soil specialists and legal expertise over the past year."

In the counterclaim, Scugog alleges that “substantial quantities of fill exceeding the standards originated from the GFL Soil Recycling Facility in Pickering in contravention of the (Ministry of Environment and Climate Change) approvals given to GFL.”

The Township has asked the MOECC to investigate, notes the lawsuit.

“The Ministry has not taken an active role with the Greenbank problem, it’s taken a passive role,” said Loopstra.

Officially, acknowledges Scugog, the Greenbank airport is owned by a numbered Ontario company, but the Township alleges that GFL is the “beneficial owner” of the site.

“Certainly all the decisions were made by the GFL people,” alleged Loopstra.

With regards to the legitimacy of the proposed airport development, which originally called for 2.5 million cubic metres to be trucked to the airbase, Scugog said in the release that it has filed “extensive materials” with the court to rebuke that claim.

The airport improvement plan, said Scugog in its release, “was not economically feasible and that the manner in which the fill was placed would not support runways, aprons, taxiways and hangars. The Township alleges that the whole operation was a commercial fill operation for the benefit of the owners of the Greenbank airport and not a legitimate airport development.”

According to Scugog’s counterclaim, the Township estimates about 1,333,990 cubic metres in dirt deliveries have been made to the airport property. Under the site alteration agreement, Scugog was to receive \$1 per cubic metre. To date, said the Township, it has received \$860,539 in fees and has drawn nearly another \$100,000 from the security deposit posted by the airport to cover more dumping fees, for a total of \$959,704.

Scugog also alleges in the lawsuit that the airport owners owe an additional \$374,286 in unpaid fees.

As well, Scugog says it has also drawn \$150,835 from the security deposit to cover legal, engineering and consulting fees.

In response to the airport owners seeking \$10 million from the Township, Scugog has countered in the lawsuit by calling the damages claimed by Greenbank officials “excessive, remote and not compensable in law against the Township. The Township further states that Greenbank has contributed to the damages sustained, if any, and have failed to mitigate its damages.”

Scugog also claims in its lawsuit that those named in the document “made misrepresentations” in their reports to the Township when it came to reports about where the soil shipments came from, the quantities and testing.

On top of the \$100 million estimated to remediate the airport site, Scugog is also asking in its countersuit for the funds to cover the unpaid dumping fees, \$500,000 for estimated legal fees, \$1 million for engineering, consulting and testing fees and \$2.6 million for interim environmental protection measures, including stormwater management and monitoring, groundwater management and erosion control measures.

The entire project, which has stretched five years now, has left Scugog “with a mountain of fill,” said Mayor Rowett in the release.

“The taxpayers of Scugog are not only facing a \$10 million lawsuit by the owner of the Greenbank Airport, but if the airport and contaminated soil within the fill pile are abandoned, they may also be left with a substantial clean-up cost. The Township has no alternative but to fight back and make those persons responsible pay for the clean-up.”

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