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Deference to 1968

The Court of Appeal for Ontario has once again reaffirmed the deference afforded to first instance judges in cases of contractual interpretation that rely heavily on the factual matrix—even where the underlying facts and history are unique.

In *Collingwood Aviation Partners Ltd v Winterland Airfield Holdings Ltd*, the Court of Appeal upheld the various declarations of the Application Judge, which were based in part on the interpretation of an agreement that was formally reduced to writing in 2014, but that dated back to 1968.

Facts

In 1968, the Town of Collingwood struck a deal with Collingwood Aviation Partners Ltd's ("**Collingwood Aviation**") predecessor to assist with building the local airport. The company would build a runway on land owned by the Town, and in exchange the Town would give the predecessor a plot of land abutting the airport to-be. Collingwood Aviation's predecessor would provide air services, including the operation of a flight school, on those lands.

This arrangement worked well for decades and, when Collingwood Aviation acquired the flight school lands in 2014, the arrangement was reduced to writing, which became the Operating Agreement.

Things changed when Winterland Airfield Holdings Ltd. ("**Winterland**") purchased the airport from the Town in 2019. Following its purchase, Winterland promptly erected a wire fence that surrounded Collingwood Aviation's property on three sides, leaving only a 90-foot opening along a single boundary. This greatly reduced access to the airport runways, and among other things impeded access to a field that was used to turn planes around and blocked access to a drainage ditch.

The Application Decision

Competing applications were brought before the Ontario Superior Court, with each seeking different declaratory relief regarding the use of the airport property.

The Application required the interpretation of the Operating Agreement. To do so, the Application Judge reviewed the history of the arrangement between the parties' predecessors, and the purpose for reducing the relationship to writing in the first place. Among other findings, the Application Judge held:

> Acknowledging and memorializing [Collingwood Aviation's] right of access appears to have been the very reason for the operating agreement.
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> The status quo gave [Collingwood Aviation] more than the access to the airport that one needs to fly an airplane, as Winterland suggests. Rather, in the words of the Town's 2014 staff report, the [Collingwood Aviation] property "has always been an [integral] part of the airport and has had access to the airport and its runways since the late 1960s". The historic context of these properties certainly demonstrates that the interpretation of [Collingwood Aviation's] "full access" cannot be imposed unilaterally by Winterland.

Relying in part on this and other aspects of the surrounding circumstances, the Application Judge found that the Operating Agreement permitted Collingwood Aviation to have "unimpeded access" to the airport lands, and that Winterland was prohibited from charging user fees for any services to which Collingwood Aviation had a pre-existing right.

The Appeal Decision

On appeal, Winterland argued, *inter alia*, that the Application Judge failed to adequately consider the safety requirements of an airport in his interpretation of the Operating Agreement, and that the Application Judge's finding regarding user fees was contrary to the plain wording of the provision and was commercially unreasonable.

The appeal was dismissed. The Court of Appeal repeatedly emphasized throughout its decision the deference afforded to the findings of fact underpinning the Application Judge's interpretation. For example, in addressing the argument that safety concerns were ignored, the Panel stated:

> The application judge found that "full access" meant "unimpeded access" based on the surrounding circumstances which, in this case, included evidence that the Town of Collingwood and [Collingwood Aviation] intended the Operating Agreement to capture the access [Collingwood Aviation] had enjoyed to the airport lands prior to the signature of the agreement. The application judge found that [Collingwood Aviation's] historical access to the airport lands was unimpeded. This is a finding of mixed fact and law which is entitled to deference and that is well supported by the record.
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> The application judge was not satisfied that Winterland presented sufficient evidence of safety concerns to justify the proposed fencing. … In fact, the application judge found that the fencing posed concerns for the safe operation of the flight school. These were findings of fact available on the record.

The Court of Appeal came to a similar conclusion regarding the user fees argument, noting that the Application Judge's interpretation of the provision in question was informed by the finding of fact that Collingwood Aviation had an implied easement, and no error was made.

Takeaway

The Application Decision is an example of the important role the surrounding circumstances may play in interpreting a written agreement, and of the evidence required to establish this factual matrix. The Appeal Decision is a good reminder of the difficulties that appellants face in appealing decisions where there has been a strong reliance on these background facts in interpreting a contract.

Even in cases of complex or novel facts or issues—here for example, an agreement from 1968 about building and operating a local airport, between predecessor parties, that was only reduced to writing over forty years later—where the interpretation of the contract relies on factual findings about the surrounding circumstances, the Ontario Court of Appeal maintains a highly deferential approach.

Potential appellants in cases where background facts and the history of the agreement are key aspects to interpreting the words of a contract should be mindful of this uphill climb, and of the potential cost consequences, when considering appealing a decision.