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# Venchiarutti v. Longhurst and Longhurst

[Indexed as: Venchiarutti v. Longhurst]

*Court of Appeal for Ontario, Lacourcière, Blair and Doherty JJ.A.*

*June 2, 1992*

**Constitutional law — Distribution of legislative authority — Aeronautics — Respondents building airstrip — Zoning by-law not including airstrip as permitted use — By-law to be interpreted so as to operate within municipality's constitutional authority — By-law not applying to airstrip — Planning Act, 1983, S.O. 1983, c. 1, s. 34(1) — Constitution Act, 1867, s. 91.**

The appellant V owned a cottage on Lake Rosseau near the village of Windermere in the Township of Muskoka Lakes. The respondent JL owned a farm to the northeast of V's cottage upon which her son, the respondent HL, had begun construction of a private airstrip. V applied for a declaration that by building a private airstrip, the respondents had violated By-law 262 of the Village of Windermere. It was common ground that the operation of an airstrip was not one of the specific uses permitted by the by-law and that the airstrip was not an existing use at the time of the passing of the by-law. V also applied for an injunction to restrain the respondents from completing the airstrip. V's application was dismissed; he appealed.

**Held**, the appeal should be dismissed.

The respondents' airstrip came within the exclusive jurisdiction of the Parliament of Canada in the general field of aeronautics, which falls within the competence of Parliament pursuant to the peace, order and good government clause of the preamble to s. 91 of the *Constitution Act, 1867*. The federal government has the exclusive power to control the location and operation of aerodromes, including the respondents' airstrip. It is a recognized canon of construction that, by reason

a of the limited presumption of constitutionality, the general language of legislation will be construed so that the legislative body is presumed to have meant to enact provisions within the limits of its constitutional powers; so, as a matter of interpretation, the municipality's by-law did not apply to the respondents' situation. The effect of "reading down" the by-law in this way meant that it did not have a double aspect. It was therefore unnecessary to resort to the doctrine of inter-jurisdictional immunity.

b *Johannesson v. West St. Paul (Rural Municipality)*, [1952] 1 S.C.R. 292, 69 C.R.T.C. 105, [1951] 4 D.L.R. 609; *Orangeville Airport v. Caledon (Town)* (1975), 11 O.R. (2d) 546, 66 D.L.R. (3d) 610 (C.A.); *Walker v. Ontario (Minister of Housing)* (1983), 41 O.R. (2d) 9, 144 D.L.R. (3d) 86, 27 L.C.R. 101, 21 M.P.L.R. 249, 14 O.M.B.R. 427 (C.A.) [leave to appeal to S.C.C. refused (1983), 27 L.C.R. 101*n*, 51 N.R. 398], **apld**

c *British Columbia v. Van Gool* (1987), 12 B.C.L.R. (2d) 361, 36 D.L.R. (4th) 481, 36 M.P.L.R. 303, [1987] 4 W.W.R. 373 (C.A.), **not folld**

#### Other cases referred to

d *Construction Montcalm Inc. v. Minimum Wage Commission*, [1979] 1 S.C.R. 754, 79 C.L.L.C. ¶ 14,190, 93 D.L.R. (3d) 641, 25 N.R. 1; *Hamilton Harbour Commissioners v. Hamilton (City)* (1976), 21 O.R. (2d) 459 at 461, 91 D.L.R. (3d) 353 at 355, 1 M.P.L.R. 133 (H.C.J.), *affd* (1978), 21 O.R. (2d) 459 at 491, 91 D.L.R. (3d) 353 at 385, 6 M.P.L.R. 183 (C.A.); *Masidon Investments Ltd. v. Ham* (1984), 45 O.R. (2d) 563, 2 O.A.C. 147, 31 R.P.R. 200 (C.A.); *Regulation and Control of Aeronautics in Canada (Re)*, [1932] A.C. 54, 39 C.R.C. 108, [1932] 1 D.L.R. 58, [1931] 3 W.W.R. 625, 101 L.J.P.C. 1, 146 L.T. 76, 48 T.L.R. 18, 75 Sol. Jo. 796 (P.C.)

#### Statutes referred to

e *Aeronautics Act*, R.S.C. 1970, c. A-3, s. 2(1) "aerodrome" [rep. & sub. 1985, c. 28, s. 1] (now R.S.C. 1985, c. A-2, s. 3(1) "aerodrome" [rep. & sub. R.S.C. 1985, c. 33 (1st Supp.), s. 1])

*Constitution Act, 1867*, ss. 91, 92 paras. 13, 16

*Planning Act, 1983*, S.O. 1983, c. 1 (now *Planning Act*, R.S.O. 1990, c. P.13), s. 34 [am. 1989, c. 5, s. 14], 34(1)

#### f Rules and regulations referred to

*Air Regulations*, C.R.C. 1978, c. 2 (*Aeronautics Act*), s. 101 "aerodrome"

#### Authorities referred to

g Hogg, Peter W., *Constitutional Law of Canada*, 2nd ed. (Toronto: Carswell, 1985), pp. 325, 327-29, 329-30, 331, 332

h APPEAL from a judgment of the High Court of Justice (1989), 69 O.R. (2d) 19, 43 M.P.L.R. 285, dismissing an application for a declaration that the respondents' construction of an airstrip was contrary to a zoning by-law.

*Robert G. Doumani and Robert A. Maxwell*, for appellant.  
*Julian Polika, Q.C.*, and *R. Dan Cornell*, for respondents.

The judgment of the court was delivered by

LACOURCIÈRE J.A.:—A constitutional issue is raised in this appeal from the order of Mr. Justice Osler [reported (1989), 69 O.R. (2d) 19, 43 M.P.L.R. 285 (H.C.J.)] dismissing the appellant's application for a declaration that the respondents violated the Village of Windermere By-law 262 by building a private airstrip on the respondent Jane Longhurst's farm property. An application for an injunction to restrain the respondents from completing the airstrip was also dismissed. The appellant raises the constitutional issue in the following words:

Should an otherwise constitutionally valid municipal zoning by-law of general application, enacted for the sole purpose of regulating the use of land within the municipality be given its full effect, in keeping with its intended scope and objective, so as to prevent a private individual from constructing a private airstrip on his property within the municipality, on the grounds that such use was not a permitted use for such property within the municipality at the time of the enactment of the said zoning by-law?

The learned motions court judge, in a brief oral judgment, concluded that, as aeronautics are within the exclusive jurisdiction of the Parliament of Canada, By-Law 262 is ineffective, because it cannot be applied to the respondents' proposed aerodrome. Notice of a constitutional question was served upon the Attorney General of Canada and the Attorney General of Ontario; however, they did not participate in the application, or in the within appeal.

### *Facts*

The appellant is the owner of a cottage on the west shore of East Portage Bay on Lake Rosseau near the Village of Windermere in the Township of Muskoka Lakes. The respondent, Jane Longhurst, who is 83 years old, owns a farm to the northeast of the appellant's cottage. The other respondent, Henry Longhurst, is her son who lives with his family on the farm property.

In 1985, and again in 1987, Henry Longhurst, who is an aircraft engineer, advised the appellant that he planned to acquire his own aircraft and to build an airstrip on his mother's property. In June of 1988, having been advised that there was no licence or approval requirement by Transport Canada to construct a gravelled airstrip on his mother's land, and by the Corporation of the Township of Muskoka Lakes that an aerodrome for use by the owner and the owner's immediate family was not contrary to By-law 262, Henry Longhurst proceeded to cut hay on the proposed location of the airstrip and started construction by grading the runway in July 1988.

a The appellant brought an application to restrain the respondents from completing and operating the aerodrome on their land, on the basis that it constituted an infringement of By-law 262. The appellant's affidavit in support of the application alleged that the respondent intended to operate a commercial enterprise in the nature of an aircraft repair business. The appellant also complained that the location of the runway endangered his family and property, and that it would lower the value of his property. These allegations were denied by the respondents. In particular, Henry Longhurst pointed out that he fully intended to use the airstrip only to the extent permitted by the municipal by-laws.

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c The learned motions court judge did not have to make findings of fact on disputed evidence. It was sufficient for his determination of the application to state that it was common ground that the respondent's property is family property subject to By-law 262, that the operation of an airstrip was not one of the specific uses permitted by and referred to in that by-law, and that the use as an airstrip was not an existing use at the time of the passing of the by-law. Other issues raised such as interference with the applicant's access to his cottage, noise and negative impact on real estate values need not be considered if this court agrees with the court below that aerodromes fall within the exclusive jurisdiction of the Parliament of Canada.

### *Legislation and definitions*

Section 34(1) of the *Planning Act, 1983*, S.O. 1983, c. 1 (now the *Planning Act, R.S.O. 1990, c. P.13*) reads as follows:

- f 34.(1) Zoning by-laws may be passed by the councils of local municipalities:
1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.

g The Village of Windermere By-Law 262, enacted under the *Planning Act, 1983*, regulates the use of land and the use of buildings and structures in the municipality. Under the existing by-law, the respondent's property is classified as a development zone, wherein the permitted uses are limited by s. 8(1) as follows:

- h 8.(1) *Development Zone Permitted Uses*: No person shall use land or erect or use a building or structure in a development zone except for one or more of the following purposes:
- (a) only the existing uses at the time of the passing of this by-law and all of the uses in Section 11 are permitted until re-zoned to a specific category upon merit.

The property was not used as an aerodrome or airstrip when the by-law was enacted and permitted uses contained in s. 11 do not include an aerodrome or an airstrip. a

At the time of the application, "aerodrome" was defined in virtually identical language in s. 2(1) [rep. & sub. 1985, c. 28, s. 1], the interpretation section of the *Aeronautics Act*, R.S.C. 1970, c. A-3 (now s. 3(1) [rep. & sub. R.S.C. 1985, c. 33 (1st Supp.), s. 1] of R.S.C. 1985, c. A-2), as amended, and in s. 101, the interpretation section of the *Air Regulations*, C.R.C. 1978, c. 2 (*Aeronautics Act*), for the purposes of the Act and regulations respectively. Section 2(1) provided: b

"aerodrome" means any area of land, water (including the frozen surface thereof) or other supporting surface used or 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 . . . c

"Airport" is defined as an aerodrome in respect of which a Canadian aviation document is in force. The expression "airstrip" is not defined or used in the *Aeronautics Act*, but an airstrip designed for the departure and arrival of aircraft would clearly be included in the *Aeronautics Act* definition of an "aerodrome". It appears that private non-commercial aerodromes, which are not licensed as airports, can nevertheless be listed in publications and maps of the Federal Department of Transport for emergency civil or military landings: *Masidon Investments Ltd. v. Ham* (1984), 45 O.R. (2d) 563, 31 R.P.R. 200 (C.A.) at p. 565 O.R., p. 204 R.P.R. d

### *The position of the appellant*

The appellant's position is that, pursuant to s. 34 [am. 1989, c. 5, s. 14] of the *Planning Act, 1983*, the Windermere By-law 262 was enacted to regulate land use within the municipality, a matter which falls within the ambit of property and civil rights or of matters of merely local or private nature in the province under the *Constitution Act, 1867*, ss. 92 paras. 13 and 16. The appellant contends that the construction or use of a private airstrip for commercial or personal use is not a permitted use of the respondent's property. The appellant's submission is that, since the federal authorities responsible for aeronautics have not exercised any direction or control over the respondents' aerodrome, the municipal authority, through its by-law of general application, can regulate and prohibit the use of land for that purpose. e

Thus, in effect, the appellant invokes the double aspect doctrine, saying that the pith and substance of the by-law deals with f

a the purely local matter of land use in the municipality, which falls within the constitutional competence of the province, and not with the general field of aeronautics, which admittedly falls within the competence of Parliament pursuant to the peace, order and good government clause within the preamble of s. 91 of the *Constitution Act, 1867*. The submission is, therefore, that the municipal by-law does not purport to apply to, or otherwise affect the regulatory power of the Minister under the *Aeronautics Act*, a power admittedly within the exclusive jurisdiction of Parliament.

### *Discussion*

c I am of the opinion that the appellant's argument is a repetition of the argument which has been rejected by the Supreme Court of Canada in *Johannesson v. West St. Paul (Rural Municipality)*, [1952] 1 S.C.R. 292, [1951] 4 D.L.R. 609, and by this court in *Orangeville Airport v. Caledon (Town)* (1975), 11 O.R. (2d) 546, 66 D.L.R. (3d) 610, and *Walker v. Ontario (Minister of Housing)* (1983), 41 O.R. (2d) 9, 21 M.P.L.R. 249 [leave to appeal to S.C.C. refused (1983), 27 L.C.R. 101n, 51 N.R. 398].

d The learned motions court judge in his reasons relied on the *Johannesson* and *Orangeville Airport* cases and on *Hamilton Harbour Commissioners v. Hamilton (City)* (1976), 21 O.R. (2d) 459 at 461, 91 D.L.R. (3d) 353 at 355 (H.C.J.), affd (1978), 21 O.R. (2d) 459 at 491, 91 D.L.R. (3d) 353 at 385 (C.A.). In my view he was correct in doing so, and in concluding that an "aerodrome" which, by definition, would include the gravelled area of the respondent's farm (the airstrip), came within the exclusive jurisdiction of the Parliament of Canada and that the municipal by-law, albeit *intra vires*, was inapplicable and ineffective to control the respondent's aerodrome.

f The subject-matter of aeronautics has been held to belong to a class of subjects which have attained such dimensions as to affect the body politic of the Dominion, thereby falling within the exclusive domain of Parliament: *Re Regulation and Control of Aeronautics in Canada*, [1932] A.C. 54, [1932] 1 D.L.R. 58, and *Johannesson, supra*. By the present *Aeronautics Act* and its regulations, the federal government has occupied the field of aeronautics. MacKinnon J.A. (as he then was) stated in *Orangeville Airport, supra*, at p. 550 O.R., p. 614 D.L.R.:

Whether the Dominion has wholly occupied the field is, in my view, irrelevant, although when one examines the present *Aeronautics Act* and its Regulations, a powerful argument can be made that it has occupied the field. The subject-matter of aeronautics is within the exclusive legislative author-

ity of Parliament and a portion of the field is not vacant because it may not have legislated on that subject-matter in every one of its details.

In my opinion, *Johannesson* makes it abundantly clear that the federal government has the exclusive power to control the location and operation of aerodromes. It follows that By-Law 262 must be interpreted, or read down, as not affecting the location or regulation of aerodromes. This is clear from the words of Kellock J. in *Johannesson*, at p. 311 S.C.R., pp. 623-24 D.L.R.:

It is no doubt true that legislation of the character involved in the provincial legislation regarded from the standpoint of the use of property is normally legislation as to civil rights, but use of property for the purposes of an aerodrome, or the prohibition of such use cannot, in my opinion, be divorced from the subject matter of aeronautics or aerial navigation as a whole. If that be so, it can make no difference from the standpoint of a basis for legislative jurisdiction on the part of the province that Parliament may not have occupied the field.

This court has followed *Johannesson* on two occasions. In *Orangeville Airport, supra*, the airport authority decided to construct five new hangars for the airport and, accordingly, filed building permit applications with the municipality, which refused the applications on the grounds that the proposed buildings did not fall within the permitted uses under the relevant local by-law. Concluding that hangars are a necessary and integral part of the operation of airports, and thus within the exclusive jurisdiction of Parliament, this court held that the by-law did not apply to airport lands.

*Walker, supra*, involved two orders issued by the Ontario Minister of Housing which imposed height restrictions on lands to the east and west of Chatham airport. Following *Johannesson, supra*, and *Orangeville Airport, supra*, this court set aside the order on the grounds that their subject-matter was in relation to aeronautics, and hence within the exclusive legislative competence of Parliament.

The constitutional principle applied by the Supreme Court of Canada in *Johannesson* and by this court in *Orangeville Airport* and *Walker* has been described by Professor Peter W. Hogg as the principle of inter-jurisdictional immunity. In his book, *Constitutional Law of Canada*, 2nd ed. (Toronto: Carswell, 1985), he relates the principle of inter-jurisdictional immunity to cases concerning federally regulated enterprises, and states at pp. 329-30:

It is now well settled that undertakings engaged in interprovincial or international transportation or communication, which come within federal jurisdiction under the exceptions to s. 92(10) of the Constitution Act, 1867, are immune from otherwise valid provincial laws which would have the effect of "sterilizing" or "mutilating" the undertakings.

However, the learned author notes in the same paragraph:

**a** In the *Quebec Minimum Wage* case (1966) (*Commission du Salaire Minimum v. Bell Telephone Co.*, [1966] S.C.R. 767), the Supreme Court of Canada abandoned the language of sterilization and mutilation, which implied a very serious impact on the federal entity, and held that the Bell Telephone Company (an interprovincial undertaking) was immune from a provincial minimum wage law on the lesser ground that such a law “affects a vital part of the management and operation of the undertaking” (*Quebec Minimum Wage*, p. 744 *per* Martland J.).

**b** The theory underlying the principle of interjurisdictional immunity does not rest on the paramountcy doctrine but apparently on the basis that federal heads of power operate “defensively” to deny power to the provincial legislatures: Hogg, *Constitutional Law*, at p. 331. Professor Hogg criticizes this theory as “inconsistent with the basic pith and substance doctrine — that a law ‘in relation to’ a provincial matter may validly ‘affect’ a federal matter”. Professor Hogg points out at p. 331, that:

**c** From a policy standpoint, the immunity of federal undertakings seem unnecessary, because the federal Parliament can, if it chooses, easily protect undertakings within federal jurisdiction from the operation of provincial laws by enacting appropriate laws which will be paramount over conflicting provincial laws.

(Footnote omitted)

**d** Thus, the federal Parliament can exclude the operation of provincial laws by enacting its own legislation which will be paramount in case of conflict.

**e** Several Supreme Court of Canada cases evidence a trend toward limiting interjurisdictional immunity by liberal application of the pith and substance doctrine. Professor Hogg, at p. 332, summarizes this line of cases as follows:

**f** In *A.-G. Que. v. Kellogg's of Canada*, [1978] 2 S.C.R. 211, a provincial law prohibiting cartoon-style advertising directed at children was held to be applicable to advertising on television (a federally-regulated medium). In *Construction Montcalm v. Minimum Wage Commission*, [1979] 1 S.C.R. 754, a provincial minimum wage law was held to be applicable to a contractor building a runway for an airport (a federal undertaking) on federal Crown land. In *Four B Manufacturing v. United Garment Workers*, [1980] 1 S.C.R. 1031, a provincial labour relations law was held to be applicable to a business owned by Indians on an Indian reserve. In each case, Laskin C.J. in dissent asserted immunity from the provincial law, but Martland J. for the majority in *Kellogg's* and Beetz J. for the majority in *Construction Montcalm* and *Four B*, finding that the pith and substance of the law was a matter within provincial jurisdiction (that was not controversial, of course), held that the law could also validly affect the federal matter to which it purported to apply.

**g** In my opinion, the *Construction Montcalm* case [*Construction Montcalm Inc. v. Minimum Wage Commission*, [1979] 1 S.C.R.

754, 93 D.L.R. (3d) 641], referred to in the passage just quoted, cannot assist the appellant. While the subject of wages paid to employees engaged temporarily in the construction of airport facilities such as runways does not form part of the exclusive and primary federal competence over “aeronautics”, it is clear, in my view, that the *location* of an aerodrome, as defined in the *Aeronautics Act*, forms an integral part of primary federal competence over aeronautics.

The appellant contends that the “pith and substance” of By-Law 262 is the regulation of land use, a matter within provincial jurisdiction, and that the by-law merely affects aeronautics. Relying on *Hamilton Harbour Commissioners v. Hamilton (City)* (H.C.J.), *supra*, and a recent decision of the British Columbia Court of Appeal in *British Columbia v. Van Gool* (1987), 36 D.L.R. (4th) 481, 36 M.P.L.R. 303, the appellant argues that the otherwise valid By-Law 262 does not necessarily become invalid merely because it affects a matter within federal jurisdiction. Thus, it should be read so as not to infringe federal aeronautics power.

In *Van Gool, supra*, the court purported to distinguish *Johannesson* on its facts, particularly in that the impugned by-law in *Johannesson* was not a general zoning by-law regulating the use of land, but a by-law specifically prohibiting the establishment of an aerodrome in the area. It should be noted, however, that the zoning by-law in *Van Gool*, unlike the by-law invoked in the present case, specifically permitted the use of land within the agricultural zone for a private airport as defined in the by-law, and purported to regulate the site area, the buildings, runways, *etc.* The court, nevertheless, disagreed with the trial judge’s application to the case of the interjurisdictional immunity doctrine, and rejected the trial judge’s declaration that the provincial legislation was invalid as it restricted or qualified the power of the Minister under the *Aeronautics Act*.

In my respectful opinion, the *Van Gool* decision cannot be reconciled with the governing decision in *Johannesson* which has been followed in this province. The enabling legislation in *Van Gool* purported to authorize municipal by-laws for licensing and regulating aerodromes and preventing their construction in certain defined areas. The impugned by-law purported to regulate the location of “private airports” and the location thereon of buildings and of the runways. The court noted, at p. 487 D.L.R., p. 313 M.P.L.R., that the impugned by-law was directed only to land use zoning within the municipality, and that the only use involved was that of a private owner, not a matter of national

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a concern but “a purely local concern over which the federal gov-  
 ernment has shown no interest in regulating”. With respect, I do  
 not see how the pith and substance of the impugned by-law in  
*Van Gool* was to regulate land use without interfering with fed-  
 eral aeronautics legislation, whereas the by-law which was con-  
 sidered in *Johannesson* went beyond local or provincial concerns  
 and could not be divorced from the subject matter of aeronautics.  
 b In my view, the fact that the by-law in *Van Gool* referred to “pri-  
 vate airports” rather than “aerodromes”, as in the *Johannesson*  
 by-law, does not change the character of the municipal  
 legislation.

c The *Aeronautics Act* makes no distinction between “airports”  
 and “private airports”, both of which constitute matters of exclu-  
 sive federal concern. There is no reference in *Van Gool* to *Con-  
 struction Montcalm Inc.*, *supra*, where the majority judgment  
 clearly states that the location of an airport, as well as its design,  
 are also matters of exclusive federal concern. Speaking for the  
 majority, Beetz J., at pp. 770-71 S.C.R., p. 654 D.L.R., said:

d The construction of an airport is not in every respect an integral part of  
 aeronautics. Much depends on what is meant by the word “construction”. To  
 decide whether to build an airport and where to build it involves aspects of  
 airport construction which undoubtedly constitute matters of exclusive fed-  
 eral concern: the *Johannesson* case. That is why decisions of this type are  
 not subject to municipal regulation or permission: the *Johannesson* case; *City  
 of Toronto v. Bell Telephone Co.*, [1905] A.C. 52, the result in *Ottawa v. Shore  
 and Horwitz Construction Co.* (1960), 22 D.L.R. (2d) 247, can also be justified  
 e on this ground. Similarly, the design of a future airport, its dimensions, the  
 materials to be incorporated into the various buildings, runways and struc-  
 tures, and other similar specifications are, from a legislative point of view  
 and apart from contract, matters of exclusive federal concern. The reason is  
 f that decisions made on these subjects will be permanently reflected in the  
 structure of the finished product and are such as to have a direct effect upon  
 its operational qualities and, therefore, upon its suitability for the purposes  
 of aeronautics.

g The *Johannesson*, *Orangeville Airport*, *Walker* and *Van Gool*  
 cases all raise similar issues of provincial jurisdiction versus  
 exclusive federal concern. In my opinion, the present case does  
 not raise the same issues.

#### *Characterization of the by-law*

h This is not a case of concurrent legislation where the federal  
 government’s exclusive jurisdiction bars, as ineffective, any  
 attempt to apply municipal zoning regulations to aerodromes or  
 airports. It is clear from its general wording that By-law 262 on  
 its face, and by its express language, does not purport to apply to  
 the respondents’ airstrip or aerodrome. This is not a case where

the province asserts planning power over airports or aerodromes. The Province of Ontario does not claim such power under the *Planning Act, 1983*; the municipality clearly did not attempt to control the respondents' aerodrome by enacting By-Law 262. In fact, it specifically denied any application of its by-law to the respondents' situation.

It is a recognized canon of construction that, by reason of a limited presumption of constitutionality, the general language of legislation will be construed so that the legislative body is presumed to have meant to enact provisions within the limits of its constitutional powers, and not beyond. See Professor Hogg, at p. 325 and pp. 327-29. The effect of "reading down" By-Law 262 in accordance with this canon of construction is that the by-law has no application to the respondents' aerodrome. The pith and substance of the by-law clearly deals solely with the local matter of land use within the municipality; it does not have a double aspect as contended by the appellant. It is therefore unnecessary to resort to the doctrine of inter-jurisdictional immunity.

It should be made clear, however, that neither Osler J. nor this court were concerned with a new By-Law 87-87 of the Township of Muskoka Lakes, which we were told has been held in abeyance, and which contains provisions purporting to regulate "private air fields", as the validity of that by-law is not before the court.

### *Disposition*

For these reasons, I would dismiss the appeal with costs payable by the appellant to the respondents.

*Appeal dismissed.*