



To the Editor:

This is an article from a series of monthly columns by Environmental Law Specialist Dianne Saxe, one of the top 25 environmental lawyers in the world, and Ms. Jackie Campbell. These articles are available for publishing at no charge, provided Dr. Saxe and Ms. Campbell are cited as the authors. Dr. Saxe can be contacted at (416) 962 5882 or admin@envirolaw.com. For more information, visit <http://envirolaw.com>.

Regulating Noise – When it is not music to the ears...

By Dianne Saxe and Jackie Campbell

Noise is one of the classic irritants that drives neighbours crazy. While not a “pollutant” in the traditional sense of a “chemical” or “substance”, noise is “emitted” into the natural environment and is regulated under environmental laws. But the law generally responds only to extreme cases, and not to ordinary annoyances.

What is noise?

Generally, noise means a sound that disturbs the quiet, peace, enjoyment or comfort of people in the vicinity. Noise can come from a stationary source (e.g., industrial operations, fixed equipment, air conditioners, construction work), mobile sources (road traffic, aircraft and trains; your neighbour’s chainsaw) and may be generated by people and animals (e.g., shouting, music, parties, barking dogs). Sometimes all it takes is the tinkling of a wind chime to enrage a neighbour.

What is sound?

Sound has two basic characteristics, frequency (pitch, measured in wave cycles per second, or hertz) and intensity (loudness, measured by sound pressure level, in a logarithmic scale called decibels). Most of us can hear sounds within a frequency range of 20-20,000 Hz, and we vary in our tolerance of loud sounds: zero dB represents the (approximate) threshold of normal hearing. Generally, sounds of up to 60dB are quiet (e.g., normal conversation, singing birds), while 100 dB is extremely loud (e.g., lawnmower, inside of subway train); 120 dB is uncomfortably loud (e.g., amplified rock music, jackhammer) and the threshold for human ear pain is 140 dB (e.g., jet plane at takeoff, shotgun blast).

Does noise impact health?

Yes, according to Health Canada's 1998 report, *The Health and Environment Handbook for Health Professionals: Health and Environment*. Noise can affect hearing loss, sleep disturbances, decreased school or job performance and even language learning. Toronto's *Health Effects of Noise* (2000) says that physiological reactions to noise may lead to cardiovascular disease.

Who regulates noise?

Federal laws set noise standards for consumer products, equipment and vehicles. For example, the *Motor Vehicle Safety Act* & regulations mandate maximum exterior sound levels for vehicles, as well as interior sound levels for certain large trucks and buses. The *Canada Labour Code* regulates occupational noise in federally regulated workplaces.

Health Canada sets standards of acceptable occupational and environmental noise, and spearheaded development of the (voluntary) standard *Noise Emission Declarations for Machinery*.

Provincial laws

Many provincial laws affect noise. For example, provinces set occupational limits for most workplaces. "Unnecessary" noise from vehicle horns is prohibited by the *Highway Traffic Act*; alas, the annoying backup beeps on heavy trucks are a safety feature, and therefore "necessary".

Noise from most stationary sources (such as factories) is controlled under the *Environmental Protection Act* (EPA). They are prohibited from discharging excess noise into the natural environment without a permit, called a "certificate of approval". There are extensive MOE guidelines on noise approvals, and factories with sensitive neighbours must often spend large sums to control noise. Nevertheless, neighbourhood conflicts often arise because of poor land-use planning. Most provinces recommend setbacks or buffer zones between noisy industries and subdivisions, but setbacks may not be large enough and are difficult to enforce. As a result, existing noise sources often find themselves with serious noise problems after new subdivisions are built next door.

Municipalities

Neighbourhood disputes over noise are usually left to the municipality (especially those relating to dogs, music, honking horns, etc.), and most municipalities do have noise bylaws. However, one of the central problems with regulating noise is how to define it. For example, Guelph defines noise as "sound that is of such a volume or nature that it is likely to disturb the inhabitants of the City" and Toronto's simply as "unwanted sound".

As a result, it is often a judgment call whether a particular noise has breached the bylaw. This can make municipal noise bylaws difficult and expensive to enforce. But the Supreme Court of Canada recently held that municipalities can successfully prosecute

persistent noisy, disruptive, recalcitrant businesses, such as nightclubs with blaring music.

When nothing else will do

When a noise bylaw isn't effective, sometimes a municipality has other options. For example, Toronto waged a long, expensive, but ultimately successful war against a noisy nightclub under the *Liquor Licence Act*. Holders of an outdoor liquor license must not permit their noise to disturb nearby residents. Nevertheless, for a decade, loud music roared across the Toronto Harbour late into the night from Docks on Cherry. Island residents complained bitterly, and charges were laid repeatedly under the noise bylaw, all without effect. Nothing changed until the City persuaded the Alcohol & Gaming Commission to revoke the liquor license.

This took an immensely expensive, 26 day hearing, followed by an appeal to the courts. But eventually, the defiant nightclub sold out to a new buyer, who got its license renewed by coming to terms with the neighbours. The new license requires the bar to ensure that *no* sound from their premises be ever audible to the community. Noise levels must be tested, and the operator pays for a monitor who roams the community to immediately report any noise, and to respond to complaints. (See in *Re Polson Pier Entertainment Inc.*)

Conclusion

For those who suffer from severe noise impacts, federal, provincial, and municipal laws may help. But for ordinary annoyances, such as your neighbour's barking dog, people usually have to find some way to get along.

For resources on the regulation of noise, go to www.envirolaw.com.