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Making noise about noise

B.C. precedent could help Toronto residents fight island airport expansion

Tens of thousands of people live along the Toronto waterfront. Condominium towers line Queens Quay from the foot of Yonge St. west to Bathurst St.

Still more are sprinkled within sight and sound of the waterfront along Front St., Spadina Ave., King St. W., Richmond St. W., and other major thoroughfares. Farther south, many thousands more live not far from the Toronto City Centre Airport at the foot of Bathurst St.

The airport is operated under a three-way agreement among the federal government, the city and the Toronto Port Authority. Under this agreement, a maximum of 83 flights a day may use the facility, but currently there are only about 20 flights daily.

This means that without any regulatory approval, usage of the airport could quadruple and the thousands of area residents would have no say in the matter.

Residents such as Orlando Urrea, who lives in a new condo complex at the corner of Bathurst St. and Queens Quay. His unit faces south and east, overlooking the harbour and the flight path of the planes using the island airport.

"It's really noisy in the summer, especially with the windows open," says Urrea. "I hope they don't increase the use of the airport," he adds, noting that property values could drop if noise levels or frequency go up.

Waterfront residents who might be opposed to an increase in use of the airport might look with some satisfaction to a decision earlier this year of the British Columbia Supreme Court. In the case of Wilfred Gary Sutherland and others vs. the Attorney General of Canada and the Vancouver International Airport Authority, the court came down heavily in favour of the local residents whose lives were affected by the noise from expanded operations of the Vancouver International Airport.

The plaintiffs in the Sutherland case were landowners in the Tait subdivision located in suburban Richmond, B.C. In November 1996, the Vancouver International Airport opened a new north runway. Its flight path runs directly over the Tait subdivision.

In what was described as a test case for about 300 homeowners waiting in the wings, three families sued the federal government (which owns the land) and the airport authority (which operates the facility under lease from the federal transport ministry). They claimed the aircraft using the north runway created "excessive, deafening and disturbing noise and vibrations," which caused each of them "substantial and unreasonable interference with the residential use and enjoyment" of their property.

Basing their lawsuit on the legal doctrine of nuisance, the plaintiffs claimed the noise and vibrations interfered with normal outdoor and indoor conversations; the use of telephones, radio and TV; daily tasks; the quality of rest and sleep; the reasonable and comfortable use of gardens, patios and yards; and the normal use and enjoyment of community amenities.

As well, the homeowners told the court the planes created and aggravated hypertension, fear and apprehension, and the exhaust fumes they emitted were noxious.

They claimed their property values had been significantly reduced, and also claimed damages for loss of enjoyment.

In law, a private nuisance has been described as an unreasonable interference with the use and enjoyment of land by its occupier. Ruling in favour of the homeowners, the B.C. court found that the change in the noise levels amounted in law to a nuisance. The homeowners lost the use of the outdoor amenities of their homes, since there were more landings in good weather. As well, the evidence showed significant loss of enjoyment of the indoor use of the homes.

The court found that noise levels from the airport did not interfere with the plaintiffs' homes before the new runway opened, and the owners weren't aware in advance of the frequency and intensity of the noise created by 40,000 planes a year using the runway.

During the trial, the judge visited the homes of each plaintiff. He heard evidence from appraisers and real estate agents about the reduced value of homes under the flight path. He heard from an aeronautical noise analyst. He devoted several pages in his judgment to terms like decibels, sound exposure levels, noise exposure forecast and equivalent sound level.

The airport authority and the federal government argued unsuccessfully that the residents had received advance notice that 40,000 aircraft a year would fly directly over their homes at low altitude and high noise level. The evidence, said the judge, did not support that argument.

It's time to bring the noise polluters into court and shut them down permanently

Damages of \$60,000, \$100,000 and \$126,500 respectively were awarded to the three sets of plaintiff owners for reduction in their property values. Additional damages for nuisance were awarded in the amounts of \$75,000, \$40,000 and \$60,000.

(The airport authority is appealing the decision, saying the case has importance not only to airports, but also to all public works that may interfere with the use of private property, and merits further review.)

Could this happen in Toronto?

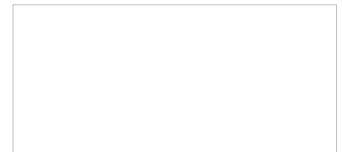
"We have the tightest noise restrictions on the continent," says John Morand, chief executive officer of the Toronto Port Authority, which runs the airport. "We have no flights over land, and there are no people living in the noise footprint of the flight paths."

(In fact, there are flights over land, as any summer visitor to the Hanlan's Point park will testify.)

Morand says the City Centre Airport is one of the quietest in North America, and there are no proposals to lengthen the runways or add new ones. That may be small consolation to those who live, work or enjoy leisure activities near the "noise footprint," whatever that is.

Despite the noise control features, many of us still feel strongly that one of the city's most beautiful parks should not have to share space with an airport operation.

Hopefully, the airport will not expand its operations beyond the current level of 20 flights a day, and local residents will be spared the necessity of a court case.



RICK EGLINTON/TORONTO STAR FILE PHOTO

WON CASE: Three families successfully sued Vancouver's airport and the federal government over noise from a new runway.

Unfortunately, the operations of the island airport are not the only waterfront activities that interfere with the enjoyment of public and private property near the waterfront. Every year for two summer weekends, outdoor areas near the Exhibition grounds and for miles in every direction are rendered virtually unusable for any peaceful and quiet activities by the nuisance and horrendous noise pollution of the Toronto International Air Show and the Molson Indy.

Cynthia Galbraith, communications manager for Molson, says the company consults with the city and a community liaison group to monitor noise from the annual car race. Only two noise complaints were logged during last year's race, she says.

I told her she can add mine to the list. Dozens of racing cars without mufflers are just not my idea of a quiet summer weekend.

Perhaps some of my legal colleagues who specialize in class actions might be willing to take on the sponsors of the annual air show and car race. It's time for the citizens of Toronto who care about the tranquillity of our waterfront on summer weekends to bring the noise polluters into court and shut them down permanently.

And it's time for our city politicians to enforce the noise control bylaws instead of suspending them for the Indy and air show.

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