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## Some noisy neighbours should just pipe down Courts intervene to restore peace Property rights can have limits

If you live in the country, your nearest neighbour may be far enough away that he or she can't be seen or heard. But when you live in the city, your neighbour may only be a few centimetres away on the other side of a common wall in a condominium or townhouse. Even in fully detached city houses, neighbours are close enough to be heard, even if they can't be seen.

With that kind of urban closeness comes noise sometimes pleasant, sometimes distracting and occasionally downright annoying.

I was reminded of the problem of noise from urban neighbours when I heard the story of Andrew Caulfield, 13, a schoolboy in Paisley, Scotland, who was recently ordered by the local council to stop practising the bagpipes outside his home.

When his mother complained to the press, the boy became an instant media celebrity, having his photograph on the front page of several Scottish papers, and on the BBC website ([http://news.bbc.co.uk/2/hi/uk\\_news/scotland/4543388.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/4543388.stm) and [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/4512780.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/4512780.stm)). He was also interviewed on As It Happens on CBC Radio One on Dec. 9, (archived at [http://www.cbc.ca/insite/AS\\_IT\\_HAPPENS\\_TORONTO/2005/12/9.html](http://www.cbc.ca/insite/AS_IT_HAPPENS_TORONTO/2005/12/9.html) - part 1).



It seems that some of the Caulfield neighbours signed a petition calling on Andrew to pipe down. The local council conducted noise tests and discovered that Andrew's outdoor pipes playing was a few decibels over the permitted maximum.

Renfrewshire council then delivered a warning that Andrew and his mother Elaine could face a dreaded ASBO an anti-social behaviour order. Once issued, Andrew's bagpipes could be confiscated and he could be fined.

Under the UK Crime and Disorder Act 1998, an ASBO can be issued to deter or prevent behaviour that causes harassment, alarm or distress to one or more people.

It was designed to combat graffiti, abusive language, excessive noise, littering, drunkenness, racial abuse, prostitution and drug dealing among other social problems.

If Andrew lived in Toronto, he could be charged with violating municipal noise control bylaws, since Canada has no legislation equivalent to the ASBO laws. In addition, his neighbours could commence a private action for damages and an injunction based on the law of nuisance.

That's what happened in 2001, when a group of citizens in British Columbia sued the government of Canada and the Vancouver International Airport Authority. They claimed that aircraft using a new north-south 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 properties.

Ultimately, the citizens lost because the airport was operating under statutory authority.

Back in 1971, the Ontario government sued Orange Productions Ltd., claiming an injunction to prevent the holding of an outdoor rock festival in Mulmur Township.

An earlier festival in the same location attracted between 25,000 and 40,000 people. Evidence disclosed activities such as nude bathing, public sex, open consumption of drugs and alcohol, excessive noise and dust, and traffic congestion had occurred.

The court granted the injunction on the basis that previous concerts in the same location resulted in a social disaster for those who normally lived there.

In 1984, a company called Formula Fun Centre Inc. operated a race car track amusement ride in the downtown motel area of Niagara Falls near the site of the new casino. The vehicles were scaled-down replicas of Formula 1 Grand Prix racing cars, smaller and quieter than the professional versions used at the Molson Indy in Toronto.

Nearby motel owners successfully sued for an injunction and damages. The court decided that the noise from the operation was considerably louder and sharper than other noises in the vicinity. The noise, fumes and smoke from the racing cars constituted an unreasonable, undue and material interference with the motel owners' enjoyment of their property.

In the last century or so, there have been many Ontario court cases based on the law of public and private nuisance. There appears to be no end to the number of ways in which people may annoy, vex or interfere with their neighbours or the public at large.

In each case, the courts try to strike a balance between the right of an occupier of land to do what he likes with his own property, and the right of his neighbour to be free from annoyance or interference.

I'm not sure which is worse jet planes, racing cars, rock festivals or bagpipes. It's probably a toss-up.

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Photo credit BBC News.

from [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/4512780.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/4512780.stm)

BBC NEWS

Boy reeling after pipe down order

A schoolboy from Paisley has been told to stop practising his bagpipes outside his home after he was found breaking anti-social behaviour law noise limits.

Andrew Caulfield, 13, was sent a warning letter from Renfrewshire Council after a complaint from a neighbour about his music.

He said he was very disappointed, particularly as he gives up his own time to teach others how to play.

The council said it was trying to mediate in a neighbourhood dispute.

Andrew stressed he had played at public events, such as piping Santa into town for the Christmas lights switch-on and at Paisley Cenotaph on Remembrance Sunday.

He has also been asked by the local authority to join a 30,000 drive to encourage youngsters to take up the bagpipes.

#### **We've got letters here saying that he could be fined or the instruments confiscated**

Elaine Caulfield

Andrew said: "I've been picked to go round schools to show kids the pipes and play in front of them to promote the council's piping school.

"What's the point in teaching kids pipes if they can't practise?"

His mother, Elaine, added: "It's very two-faced of the council to be wanting somebody to be involved in the council initiative, yet they're banning him from practising.

"He just practises during the day and in the evenings during the summer."

She went on: "We bought a small set of pipes and the neighbour complained about that.

#### **Resolve dispute**

"They didn't want any musical instrument being played at all which angered me very much.

"We've got letters here saying that he could be fined or the instruments confiscated."

However, a spokeswoman for Renfrewshire Council said it was trying to help resolve a neighbourhood dispute.

"There has been no Asbo, no Asbo threat and no noise abatement order," she said.

#### **We have received several complaints and a petition signed by local residents referring to excessive noise from the outdoor playing of bagpipes**

Renfrewshire Council spokeswoman

Checks were carried out after neighbours had complained about the noise, and found that it breached the Anti-social Behaviour Act's permitted daytime level of 41 decibels.

"We have received several complaints and a petition signed by local residents referring to excessive noise from the outdoor playing of bagpipes," said the spokeswoman.

"We want to resolve this matter in an amicable fashion for everyone involved and have offered various support mechanisms, such as mediation, to do this."

The spokeswoman added that there was no impact on the piping initiative being run through its schools.

"Each pupil involved in this programme is given practise chanter pipes to take home, which are substantially quieter than proper bagpipes and produce noise levels similar to that of a recorder so should be able to used inside the home without causing such disturbance," she said.

Story from BBC NEWS:

<http://news.bbc.co.uk/1/hi/scotland/4512780.stm>

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BBC MMVII

*from [http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/uk\\_news/scotland/4543388.stm](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/uk_news/scotland/4543388.stm)*

BBC NEWS

Pipes of peace for noise row boy

#### **Special 1,000 bagpipes have been gifted to a Paisley schoolboy, who was told to stop practising his instrument outside by the local council.**

Renfrewshire Council said Andrew Caulfield, 13, was breaching anti-social behaviour law noise limits.

After hearing about the young piper's plight, professional piper Fred Morrison decided to donate the pipes, which are quieter than normal.

Mr Morrison, 42, said he could not let bureaucracy dampen Andrew's enthusiasm.

Fred, who played with the folk band Capercaillie and on the soundtrack for the film Rob Roy, said: "When I saw that story, it really irritated me.

"I thought here's another wee boy trying to do his best and get involved with piping.

"I thought I would give him a set of small pipes and he can practise to his heart's content."

#### **They make a lovely sound and are much quieter**

Elaine Caulfield

Andrew's mother

Fred, who lives on the Hebridean island of Benbecula, designed the pipes.

They also have a special switch which turns off the instrument's drone, allowing an even quieter sound.

Andrew was delighted with his gift, which he described as "brilliant."

He said: "I was really excited when I heard about it. I'm going to practise more now that I can."

Andrew's mother, Elaine, said she could not thank Fred enough.

"They make a lovely sound and are much quieter," she said.

#### **Gained support**

The council had written to Elaine after a neighbour raised a petition calling for Andrew to stop playing outside.

Noise abatement officers carried out tests and found Andrew's playing was two decibels above the Anti-social Behaviour Act's permitted daytime level of 41 decibels.

Andrew gained support from pipers as far away as the United States.

In an e-mail to the BBC Scotland news website, US piper Paul Boland said: "Me and the rest of the piping and drumming community fully support Andrew Caulfield, his students, and fellow pipers in Paisley.

"They should be able to hone their craft and celebrate Celtic music and culture in a fostering environment.

"With so many things changing in our world so fast and the 'global village' getting smaller and smaller our cultural identifiers should become more and more important. Keep on piping Andrew."

Story from BBC NEWS:

[http://news.bbc.co.uk/go/pr/ft/-/2/hi/uk\\_news/scotland/4543388.stm](http://news.bbc.co.uk/go/pr/ft/-/2/hi/uk_news/scotland/4543388.stm)

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