



By Alexis Robinson

What a Nuisance!

We all have a pretty good idea about what “nuisance” in its ordinary sense means: the neighbour’s cat meowing all night when in heat or the noise from the annual Christmas party next door. However, establishing an action for nuisance in a court of law requires more than a mere annoyance, beginning with proof of damage.

Public Nuisance

There are two types of nuisance known to the law – public and private. Because public nuisance is a crime and the prosecution of it is ordinarily left to the state it will not be discussed in detail here, though an individual may sue for public nuisance where he can show that he has suffered special damage beyond what the public endured.

Private Nuisance - Damage to Land

The action for private nuisance exists to protect an occupier’s right to enjoy his property. To succeed a Claimant must show that he has suffered damage. Damage can be actual physical injury to the land itself or it can be interference with enjoyment of the land due to sound, smell, vibrations, etc. Though both types of damage are covered by private nuisance actions, proof of actual material damage to land puts the claim in a different category. Where there is only personal discomfort the Claimant must show that the Defendant is using his land unreasonably, in that it causes an unreasonable interference with the Claimant’s use of his land. However, where there is actual material damage to the property the Defendant is automatically assumed to be using his land unreasonably.

Private Nuisance - Personal Discomfort

In cases where the Claimant is only experiencing personal discomfort and there is no damage to the land the court will weigh various factors to determine whether or not the Defendant is using his land unreasonably. These include the nature and extent of the damage suffered by the Claimant, the nature of the locality where the alleged nuisance is committed, the duration of the nuisance, whether the Claimant is especially sensitive, and the purpose with which the Defendant acts.

Remedies

There are two remedies available for someone suffering from a legal nuisance – damages and/or an injunction. Damages seek to put the Claimant back in the position he was in before the nuisance occurred, while an injunction restrains the Defendant from continuing any conduct which the court has determined constitutes a nuisance.

Balancing Reasonableness with Quick Action

Nuisance is all about balancing rights. Both parties will usually feel that they ought to be entitled to the free enjoyment of their respective properties, and they are, but only to the extent that they do not unreasonably interfere with the other's right. Neighbours are therefore encouraged to foster harmonious give-and-take relationships with each other. However, because of this, many people delay before taking action, hoping that neighbourly affection will turn things around without the need for lawyers. The problem here is that if the nuisance is continuing, delay may become a bar to obtaining an injunction to restrain it in the future. Don't let this happen to you – what a nuisance that would be!

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