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**** HIGHLIGHTS ****

- * A justice of the British Columbia Supreme Court has granted a limited injunction in favour of a small farmer whose sheep, turkeys and chickens were startled and "piled" (some died) as a result of loud gunshots emanating from a neighbouring gun club. The gun club was required to make a number of modifications to reduce noise to accommodate the farmer and the residents of other small acreage who had moved to the Saltspring Island location of the gun club long after it was established in 1959. (Milne v. Saltspring Island Rod and Gun Club, [CALN/2014-023](#), [\[2014\] B.C.J. No. 1236](#), British Columbia Supreme Court)

**** NEW CASE LAW ****

Milne v. Saltspring Island Rod and Gun Club; [CALN/2014-023](#), Full text: [\[2014\] B.C.J. No. 1236](#); [2014 BCSC 1088](#), British Columbia Supreme Court, E.M. Myers J., June 17, 2014.

Nuisance -- Noise Disturbance to Livestock.

The Plaintiff's Brian Milne and Jean Barakett ("Milne") own a 22 acre farm on Saltspring Island on which they raise sheep, turkeys and chickens. Milne brought an action for nuisance, and sought an injunction, against the neighbouring Saltspring Island Rod and Gun Club (the "Gun Club") for noise and alleged lead pollution emanating from the Gun Club.

The Gun Club has 4 shooting areas: an indoor range and three outdoor ranges - a trap shooting range, a rifle range and a "cowboy action" range with mock western targets.

The gun club had been using its land since 1959 - long before Milne purchased his farm in 2006.

It was admitted that shooting at the Gun Club could be heard on the Milne farm. The issue was whether the noise was unreasonable given the character of the neighbourhood. Milne also alleged that lead from the Gun Club land polluted a stream which ran through the farm.

Milne does not reside on the farm. He rents a residence on the farm to a third party, and uses the farm to raise livestock. Milne testified that there are often very loud gunshots which startle his sheep and cause them to scurry. He testified that the shots cause his turkeys to pile up and suffocate. On one occasion he lost 13 turkeys.

Milne's tenant indicated that the gun shot noise is frequent and unpredictable. Some of it is semi-automatic. Some is large .50 calibre hand guns. He said it caused the sheep and chickens to run into the barn and "pile".

An expert acoustical engineer, who testified on behalf of Milne, recorded sounds ranging from 65 to 104 decibels over a period of 4 visits to neighbouring land, and indicated that it exceed levels permitted by a Municipal Bylaw for "peace, quiet and enjoyment".

A number of neighbours testified that the noise disturbed their enjoyment of their property and that they could hear it indoors.

Noise by-law tickets had been issued by the Municipality. The Gun Club attempted (unsuccessfully) to confine shooting to specific hours of the day prescribed by its license.

Decision: Myers, J granted a limited injunction which would require the Gun Club to reduce shooting hours, soundproof and add doors to the indoor range, construct outdoor berms and collect spent lead [at para 58].

Myers, J. discussed the law with respect to nuisance - the unreasonable interference with a person's enjoyment of their land or physical damage to their land - at para. 42 to 47.

Myers, J observed that the concept of reasonableness always involves a balancing of the interests between the parties [at para 43].

The character of the neighbourhood is an important consideration [at para 44]. What is a nuisance in one area may not be a nuisance in another area. Social utility is a factor; however a lack of social utility cannot transform an otherwise reasonable use of land into a nuisance [para. 46].

Compliance with by-laws or regulations is not a defence [para 47].

Myer, J accepted the evidence of the Plaintiff's [at para 51] that the "...noise is disturbing. It is percussive. It is irregular in its intervals and therefore unpredictable. It can be frightening ...". He did not need to rely on the expert report to come to this conclusion.

With respect to the character of the neighbourhood Meyer, J noted that Saltspring Island was neither urban or industrial, noting that many people moved there for peace and quiet.[para 50] and that the fact that the Gun Club found itself bordering small acreage residential neighbourhoods required it to change with the character of its neighbourhood [at para 53], and concluded that "the shooting as currently practised constitutes a nuisance" [at para 54].

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