

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Small Claims Court)

CESALTINA FIUSA, GILBERTO FIUZA, and RICARDINA FIUZA  
Plaintiffs

- and -

CREEKSIDE REAL ESTATE GROUP INC., ANDREW DOOLING, JACQUELINE  
FERGUSON, THE CORPORATION OF THE CITY OF CAMBRIDGE and WATERLOO  
(REGION) POLICE SERVICES BOARD  
Defendants

\* \* \* \* \*

**P R O C E E D I N G S   A T   T R I A L**

BEFORE THE HONOURABLE MADAM DEPUTY JUDGE C. DICKENSON  
on January 16, 2018 at KITCHENER, Ontario

APPEARANCES:

Mr. T. Ellis	Counsel for the Plaintiffs
Mr. F. Battiston	Counsel for the Respondent, Creekside Real Estate Group
Mr. A. Dooling	Unrepresented Respondent
Ms. J. Ferguson	Unrepresented Respondent

T A B L E O F C O N T E N T S

ONTARIO  
SUPERIOR COURT OF JUSTICE

W I T N E S S E S

<u>WITNESSES</u>	<u>Exam. in-Chief</u>	<u>Cr- Exam.</u>	<u>Re- Exam.</u>
FIUZA, CESALTINA	20		

E X H I B I T S

<u>EXHIBIT NUMBER</u>		<u>ENTERED ON PAGE</u>
1	Plaintiffs Book 1	23

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Legend

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.  
(ph) - Indicates preceding word has been spelled phonetically.

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**TUESDAY, JANUARY 16, 2018**

...UPON COURT COMMENCING (9:35:39)  
...UNRELATED MATTERS HEARD, RECORDED NOT TRANSCRIBED  
FOR THE PURPOSE OF THIS TRANSCRIPT

**THE COURT:** Mr. Battiston, is it?

**MR. BATTISTON:** That's me.

**THE COURT:** Is there anyone else in the hallway on  
the trial? Is everyone present?

**MR. BATTISTON:** I believe the parties that are left  
in the action, they are here yes. I represent one of  
the defendants, the Doolings are here. I saw them  
outside. I came in, I believe the plaintiffs are  
here, there are three of them and I believe Mr.  
Ellis, their legal representative is here as well.

**THE COURT:** All right, I'd like to get a sense of how  
long this matter's going to take so Mr. Clerk could  
you page the parties on matters number four and five  
please.

**MR. BATTISON:** And, for the record, the defendants'  
claim has been withdrawn, Your Honour, so it's just  
the claim.

**THE COURT:** All right.

...PARTIES ON FIUZA AND CREEKSIDE MATTER PAGED TO  
COURTROOM 504

**MR. ELLIS:** Good morning, Your Honour.

**THE COURT:** Good morning. I just wanted to get a  
sense from the parties in the trial please of the  
Creekside and other defendants and if the other

defendants are in the hallway perhaps, they should -  
can you page the other defendants as well please, the  
unrepresented ones. There are a few people coming.

**MR. ELLIS:** I left my stuff in the hall.

**THE COURT:** Well, you're not going to be getting  
started. I just want to get a sense from the  
parties, how long they're going to be, how many  
witnesses we have because there is a second trial  
after that and I need to poll the list to see what  
our time is going to be like. All right so is  
everybody here now on matter number four?  
Represented parties and unrepresented parties? This  
is everybody?

**MR. ELLIS:** Yes.

**THE COURT:** So, who's left in the action?

**MR. ELLIS:** Creekside.

**THE COURT:** Okay.

**MR. ELLIS:** Andrew and Jacqueline.

**THE COURT:** Andrew Dooling?

**MR. ELLIS:** Yes.

**THE COURT:** And, Jacqueline Ferguson?

**MR. ELLIS:** Yes.

**THE COURT:** And, of course the plaintiffs?

**MR. ELLIS:** Yes.

**THE COURT:** All right. Mr. Ellis you're on for the  
plaintiffs?

**MR. ELLIS:** Yes.

**THE COURT:** And how much time do you anticipate your  
case is going to take?

**MR. ELLIS:** At least a half a day.

**THE COURT:** Are you calling any witnesses other than the plaintiffs?

**MR. ELLIS:** Yes.

**THE COURT:** How many?

**MR. ELLIS:** Two.

**THE COURT:** Other than the plaintiffs.

**MR. ELLIS:** Two other than the plaintiffs.

**THE COURT:** So, five in total?

**MR. ELLIS:** Five in total, yes.

**THE COURT:** And, have document briefs, if they're necessary, been exchanged?

**MR. ELLIS:** Yes.

**THE COURT:** Yes, you sounded somewhat equivocal?

**MR. ELLIS:** I've sent my document briefs.

**MR. BATTISTON:** I have condensed version of yours. I'm just reorganizing some of your documents. I have a document brief for you as well.

**MR. ELLIS:** Okay.

**MR. BATTISTON:** No new documents, Your Honour.

**THE COURT:** Are there any documents in the court file other than what's attached to the claim or defence because they're not evidence.

**MR. ELLIS:** Yeah, no they're not in the court file, yes.

**THE COURT:** Okay, they're not in the court file.

**MR. ELLIS:** This trial was supposed to happen a year ago, Your Honour. It got adjourned and then it got - it disappeared in the court system.

**THE COURT:** All right. Mr. Battiston, how long for your case?

**MR. BATTISTON:** One witness, probably fifteen minutes in-chief. And, just to be clear that's just as a defence and the evidence for the defence. The defendants' claim has been withdrawn.

**THE COURT:** That's what I understood, yeah, okay. Mr. Dooling are you in the courtroom, Andrew Dooling? Sir, I take it you're going to be giving evidence on your own behalf? Are you or....

**MR. DOOLING:** I haven't really considered it, no.

**THE COURT:** No? Did you have any plan as to what was going to happen today?

**MR. DOOLING:** No, just come here and see what happens that's all I really can do.

**THE COURT:** I see, so okay. So, you're not going to give any evidence and you're not going to call any witnesses I assume?

**MR. DOOLING:** Witnesses maybe. I'm not a hundred percent....

**THE COURT:** Well, today's the day so either you do, or you don't and if you...

**MR. DOOLING:** I can attempt to....

**THE COURT:** Well no sir that's not good enough. you're here for trial today. You're expected to be ready today. As I understand from Mr. Ellis this matter has been sitting languishing for a year now so today's the day to be ready for it.

**MR. DOOLING:** Mm-hmm.

**THE COURT:** And, I'm not giving any adjournments to anybody so either you give evidence, or you don't.

**MR. DOOLING:** Okay then no.

**THE COURT:** All right. Ms. Ferguson, Jacqueline Ferguson, will you be giving evidence?

**MS. FERGUSON:** No.

**THE COURT:** So, you're basically taking the same position as Mr. Dooling?

**MS. FERGUSON:** Yes.

**THE COURT:** All right and I take it the City of Cambridge and the Waterloo Region Police are no longer involved in this action?

**MR. ELLIS:** No, they are not.

**THE COURT:** Okay, so it's been discontinued or dismissed against them?

**MR. ELLIS:** Yes.

**THE COURT:** All right, so that leaves us with at least a half a day plus, so I would expect this matter will likely go to 3:00 if not longer, taking a lunch break into consideration, would that seem fair?

**MR. ELLIS:** Yes. It might go less; I'm just trying to estimate properly. There's a lot of documents.

**THE COURT:** Well, I appreciate it Mr. Ellis. I have never seen in my entire career anybody go less than what they say. That's something of a joke amongst people who work in this business but usually when lawyers say a half a day, they end up taking a full day so, in any event that's what we have. We still have the garnishment hearing to deal with. I anticipate that will be short but the parties on number four you can return to the body of the courtroom.

...MATTER STOOD DOWN; OTHER MATTERS SPOKEN TO

**CLERK OF THE COURT:** Start the trial?

**THE COURT:** Yes, you can page the parties to return.

5  
...PARTIES ON FIUZA AND CREEKSIDE MATTER PAGED TO  
COURTROOM 504

**MR. BATTISTON:** This is a condensed version plus I've  
also paginated the numbers - I've paginated these  
10 documents.

**MR. ELLIS:** Those are all your - okay. Is this a  
replacement of one with the other? This is a  
continuation of part two....

**MR. BATTISTON:** Yeah.

**THE COURT:** All right. We'll take a few moments to  
15 deal with Mr. Rowden please on matter number three.

...MATTER STOOD DOWN, OTHER MATTER SPOKEN TO

20  
...PARTIES ON FIUZA AND CREEKSIDE MATTER PAGED TO  
COURTROOM 504

**THE COURT:** Yes, Mr. Dooling and Ms. Ferguson, you're  
parties so you may sit up at counsel table. We can  
25 add some chairs and you can sit back towards the end,  
but you don't need to sit in the body of the  
courtroom.

**MR. BATTISTON:** Your Honour, may I address the Bench?

**THE COURT:** Certainly.

**MR. BATTISTON:** From what I've experienced in this  
30 case which has been going on for an excess of three



5 years, my clients as you well know are the owners of the house. It's a private company, it's just Mr. and Mrs. - essentially, having made an investment to purchase this house in Kitchener. They are the landlord and early on in this process obviously the plaintiffs decided to sue my client in addition to the By-Law Enforcement Department of the City of Cambridge and the Waterloo Police Department. When we had a pre-trial conference in this matter some 2-1/2 years ago, those departments were not represented, and I believe at the time Mr. Ellis indicated that he had thought of a proposed dropping the case against them.

10 Indeed, we have learned that since that time the case has been dropped against the By-Law Enforcement Department and against the Police Department. So we're left with the - what I would submit to be the main dispute between the neighbours who lived beside each other for some period of time which include Mr. Dooling and Ms. Ferguson who have since left the property.

15 Along the way the By-Law Enforcement Department did not issue notices of violation and the Police Department did not issue notices of violation or charges which probably then prompted and motivated the decision to drop the case against them.

20 Well, the way the case has been pleaded by Mr. Ellis, there's an allegation of negligence against Creekside, the By-Law Enforcement Department and the Police Department for failing to investigate and lay charges. So, my clients can't lay charges and

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10  
certainly they weren't in a position to investigate so lest on January 8th I wrote to Mr. Ellis and asked him to please clarify the nature of the claim against my client because the only reference is to a claim of negligence for having caused stress and mental issues due to the By-Law Police failing to properly assess, investigate, interview witnesses, review evidence and lay charges and I advised Mr. Ellis there are no specific allegations made with respect to the conduct of Creekside.

15  
Mr. Ellis did not respond to my request to clarify what it is that I will be forced to - be compelled to sit through what could be hours of testimony and what appears to be hundreds of pages of reports of incidents when I'm not exactly sure what my clients have done or have not done which could have been of any assistance in the circumstances.

20  
*The Landlord and Tenant Act* did not give my clients any rights to terminate a lease on suspicion that there was a noise problem or certainly that there was a lack of objective evidence that would possibly put them in a position of even consider doing so.

25  
As it turns out and indeed in the beginning my position on behalf of my clients was as follows:

30  
There had been no charges and you, the neighbours, the plaintiff are causing the tenants serious disruption and if they leave we will consider that to be a violation and a contravention of their - of our right to have tenants remain in possession of this house and to continue to collect rent.

5 So that was the basis for the defendants' claim. As  
time would have it Mr. Dooling, Ms. Ferguson left the  
premises. My clients were fortunate enough to re-  
rent the premises shortly thereafter and essentially  
there was a minor, very minor loss on their part so  
the exchange was to propose to Mr. Ellis that we will  
essentially withdraw the defendants' claim, which  
indeed has been done. That wasn't an offer, that was  
a proposal that that was the decision that was made,  
10 but to provide me with an exact - a more specific  
indication as to what it is my clients may be  
responsible for in this matter.  
I will be forced to listen to all kinds of evidence  
about what happened on a day-to-day basis between the  
parties. Again, my clients live in Toronto so they  
are certainly not in a position to respond basically  
to some of the testimony that we're going to hear  
from the plaintiffs but most of that will not involve  
my clients, Your Honour.

15  
20 So I'm a little concerned you know - they're - they -  
my clients have chosen to hire legal representation.  
The Dooling's are not represented and I'm a little  
concerned about some of the responses I heard when  
25 you were canvassing with them, what they intend to do  
about the evidence that will be presented by the  
plaintiffs and evidence that Mr. Ellis will rely on  
in support of his case but a lot of - I submit that  
most of that if not and certainly I would venture to  
30 say all of that certainly is not relevant to my  
clients who will be forced to sit through a trial

5 which - I mean if they have to sit through a trial so be it. But I don't know what it is that we're responding to as far as the case against them, particular in light of the fact that the authorities have been let go from the action.

10 There are going to be all kinds of reports about why notices of violation were not issued and I'm relying on that to say you know if the authorities didn't take effective action on this thing what did you really expect my client to do? So, I'm really in your hands Your Honour but we're going to be sitting at the end of the table listening to - I don't know - what I fear, what I heard was five witnesses which I'm not even sure if any of that will be relevant enough for me to cross-examine but I'm just putting all that on the table because at minimum I would certainly like an indication to know what it is that is being relied upon in support of any alleged negligence on the part of my client.

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20 **THE COURT:** Mr. Ellis do you have anything in response?

25 **MR. ELLIS:** Yes, Your Honour. I apologize that I didn't get back to him last week. It gave me one day to respond. I was in back-to-back trials.

30 Under the *Residential Tenancies Act* the landlord has a responsibility to deal with reasonable enjoyment of other tenants' neighbours, neighbours in a unit. Creekside had a responsibility. They could have taken the tenants to the Residential Tenancies Board due to the noise complaint issues that were going on. There was a situation at the very beginning where

5 Joe, one of the owners, showed up at the residence with the By-Law trying to help alleviate the problem with the subwoofer and the issues with the banging noise of the neighbours between the two units. They chose to do absolutely nothing because By-Law did nothing.

10 There are several pieces of caselaw out there, Your Honour that discusses the fact that just because By-Law chose and has a very - Cambridge's noise By-Law's extremely vague, Your Honour and just because they chose not to charge somebody for a noise complaint doesn't mean that there wasn't a private nuisance going on.

15 The landlords were brought in because they had a responsibility to make sure of reasonable enjoyment of the neighbours. Yes, my clients are not tenants, they own the other semi but he owned the first semi so it was his responsibility to make sure that the other neighbours weren't disrupted by his tenants and I've discussed this with my friend at the settlement conference a year and a half ago.

20 **THE COURT:** Is that correct, Mr. Battiston?

25 **MR. BATTISTON:** At the time when the authorities were still involved in the action, I asked my friend to produce to me all the reports which were not available at the time when the only - when that was the only other time we convened regarding this case. Then I received all the documents that had been produced and then I was advised that the case was  
30 dropped against the authorities and then the case sat dormant for approximately two years after that.

**MR. ELLIS:** One year.

**MR. BATTISTON:** Well, these events go back to 2015.

**THE COURT:** Well, what I'm looking at right now is this. The claim was issued February 18<sup>th</sup>, 2015. Creekside's defence was issued on March 19<sup>th</sup>, 2015. I don't see any request for particulars for example in terms of what you're alleging is that you don't know what this case is about your client. Number two, not quite sure when this action was dismissed against the authorities; whether or not that has any bearing on your client's involvement. I certainly can't decide at this point but there is a rule in Small Claims Court where a party, if they feel a matter is not actionable in law or is a waste of the court process or is an abuse of process similar to say a Rule 21.01(b) motion that you can bring a motion to dismiss and I don't see that that's been done.

**MR. BATTISTON:** No.

**THE COURT:** So, I hear your complaints about having to sit through a trial and listening to something that you don't think is going to have any application to your clients, but it was always for you to bring that Rule 12.02 motion. It's in the court rules, the Small Claims Court. That was an option available. Here we are today.

I certainly don't have any materials before me on which I can even make any kind of reasoned decision as to whether or not at this stage the claim against Creekside should even be struck. If Mr. Ellis has a problem with proving his claim against you then

that's going to be a problem for him at the end of the day. I think that goes without saying. I think that's just the way these claims fall. It's for the plaintiffs to prove. End of discussion.

5 So, without further ado I think we should get started and if there's any other preliminary issues anybody would like to complain about, I want to hear about them now and not in the middle of the trial.

**MR. ELLIS:** I have no issues, Your Honour.

10 **THE COURT:** I mean how long has this matter been on the trial list for. You got notice of trial October 23rd, 2017. It's a long time ago so.

**MR. BATTISTON:** That was a long time ago.

15 **THE COURT:** October 23rd, 2017, it was months ago. That's what I'm saying. Nothing's happened since then. Nobody's taken any steps to do anything to get out of this action since then. I don't know why you didn't know when Mr. Ellis released some other parties. I mean how could you....

20 **MR. ELLIS:** The notice of discontinuance was sent to everybody, Your Honour.

25 **THE COURT:** I would expect it would have to be the case so in any event, here we are. There's a trial to be heard today and we're going to proceed. It's five to eleven and if there's any witnesses in the body of the courtroom that shouldn't be here because they're not parties, they are to be excused now.

**MR. ELLIS:** And my witnesses are waiting out....

**THE COURT:** Okay. Ma'am, you are?

30 **MR. BATTISTON:** Ms. Buonvivere is not a witness.

**THE COURT:** Oh, okay. All right and your client is sitting beside you?

**MR. BATTISTON:** Ms. Buonvivere is a principal of the company, yes.

**THE COURT:** Okay, all right, let's begin.

**MR. ELLIS:** Do we want to do any opening statement or just witnesses.

**THE COURT:** I'm sorry.

**MR. ELLIS:** I wasn't sure if we already did the opening statement or not.

**THE COURT:** No, that was a preliminary matter.

**MR. ELLIS:** So, Your Honour today I believe that you are going to hear evidence in regards to the fact of the private nuisance of the neighbours playing their music not excessively loud but with bass against the centre wall that sounded like this all day long and yes there was lots of noise complaints. It caused severe medical conditions with the owners of the property. They lived there for more than forty-five years and never had this issue until the defendants moved in next door. Since the defendants have left, they still haven't had any issues, but they had definite issues when the defendant was there so the testimony, you're going to hear today, Your Honour will cover those avenues.

**THE COURT:** Is that everything Mr. Ellis?

**MR. ELLIS:** Yes, Your Honour.

**THE COURT:** All right. Mr. Battiston?

**MR. BATTISTON:** You've heard some of what I had to say about the background, Your Honour. My clients purchased this house in - several years before the



5 Doolings moved in. They had one - one tenant that occupied before, but they are not corporate landowners, they are private landowners. They save their money and invest in real estate for financial purposes. They are very responsible with their money and responsible with their investments.

10 They exercised as in other previous cases with respect to tenants, exercised due diligence in screening applicants and prospective tenants for their properties that - I believe they have one or two other residential properties. This isn't the only one but they - Mr. Buonvivere knows how to basically handle residential leasing and in the course of trying to lease this particular property, he received basic information from Mr. Dooling and Ms. Ferguson indicating that he was - Mr. Dooling was employed, Ms. Ferguson was not employed at the time because she had just had a baby. So, they had a young family. The house was perfect for somebody like that. There was nothing to indicate in any of the previous information and available information that they weren't anything but a regular small family, young family getting started.

25 Financially they were able to support the payment of the rent and to maintain their payments and there was nothing else in the information to indicate that they would use the house for anything else except normal residential purposes, especially with a baby and everything that is entailed in raising a small child. Mr. Dooling is not a rock musician. He wasn't at the

time. He wasn't a DJ. He wasn't - I believe he is employed in construction.

**MR. DOOLING:** Welding.

**MR. BATTISTON:** Welding, yeah in construction. So again, regular family with a baby that could pay the rent. Mr. Buonvivere was certainly convinced that there was not a problem renting the house to the family and he did so.

Everything was proceeding smoothly until the complaints started and most of the focus of those complaints, the target of those complaints or sorry the recipients of the complaints were the By-Law and the Police and early on Mr. Buonvivere met with the By-Law people, met with police, met with the complainant. Actually, sat in the house of the complainant and there was nothing that could be heard that could in any way be considered disturbing and that was just the beginning.

From then on it went on to a series of phone calls from the By-Law officers, various By-Law officers involved that really prevented him from getting involved in any way, shape or form because they essentially decided not to issue any notices of violation because there was no disturbance.

That's the evidence that you're going to hear from Mr. Buonvivere on behalf of Creekside. The rest, he was not there. He was not a witness to it. He was not directly involved, and you heard how in the beginning the By-Law people - By-Law Department and the City of Cambridge and the Police were involved. They have since been released from the action so if

5 there's negligence I think the duty of my client to exercise due diligence was met and complied with and there was nothing that could compel him to interfere with the right of Mr. Dooling and Ms. Ferguson to continue residing in the premises. Thank you.

**THE COURT:** Thank you. Mr. Dooling or Ms. Ferguson, do you wish to make any opening at this time?

**MR. DOOLING:** No comment.

**THE COURT:** Okay. Ms. Ferguson?

**MS. FERGUSON:** No comment.

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**THE COURT:** All right. I want to impress upon you that you are defendants. You're named separately okay and for you not to give any evidence could be problematic. It's your choice. I'm not going to tell you how to defend yourselves but I just want to give you fair warning that it may be pure folly on your part to sit there and say nothing because what I have to do is I have to hear the evidence of all of the parties and I have to decide number one who's credible and who's not. Who is telling the truth, who's not and that is based on not only your oral evidence but the documents that I'm going to see filed in this case today?

25  
And, then I'm going to have to decide the legal aspect of the claim based on the facts as I find them which I determine from the oral evidence of all the parties and again the written documents of all the parties.

30  
So, just so you're aware I'm here as essentially, I'm the referee. So, everybody presents their case accordingly and I have to decide what the play is

5 that needs to be called, okay? I appreciate that you're not represented in any form. The other parties are so I think it is important as a matter of fairness to you that I give you this - not a warning but some information in advance.

10 Similarly, I would think that, and I would hope that Mr. Ellis as a paralegal and Mr. Battiston as counsel have been fair to you in their dealings with you because you are unrepresented because those are their obligations as well. So, without further ado I take it, Mr. Ellis, you're ready to begin?

**MR. ELLIS:** Yes, Your Honour.

**THE COURT:** Then can your first witness.

**MR. ELLIS:** My first witness is Cesaltina Fiuza.

15 **CLERK OF THE COURT:** You have a choice to swear on the holy book or affirm to tell the truth?

**MS. FIUZA:** Holy book.

**CESALTINA FIUZA: SWORN**

20 **CLERK OF THE COURT:** Please state your name for the record.

**MS. FIUZA:** Cesaltina Fiuza.

**CLERK OF THE COURT:** You are sworn, thank you.

25 **MR. ELLIS:** Thank you. Your Honour, these are the documents that we plan on relying on today. Would it be easier if I just brought up one book at a time as we're going through them or would you like them all at the beginning?

30 **THE COURT:** Have you discussed this with the defendants? In other words, are the parties all aware of what document briefs...

**MR. ELLIS:** Yes.

**THE COURT:** ...Mr. Ellis wishes to file?

**MR. BATTISTON:** Yes, I have been. I'm not sure the Doolings have.

**MR. DOOLING:** Yeah, I've been advised.

**THE COURT:** Okay, good. So, are these being filed for the truth of their contents?

**MR. ELLIS:** Yes.

**THE COURT:** They are?

**MR. ELLIS:** Yes.

**THE COURT:** Okay. Any objections to that?

**MR. BATTISTON:** There are reports from the authorities which I will agree should be tendered on that basis. There are a number of handwritten notes from either one or more of the plaintiffs - well those should not be admitted for the truth but they should - in fact since Ms. Fiuza will be giving evidence then that is the primary evidence that should be presented to the Court and I do not - I submit that those handwritten notes should not be admitted for the truth of whatever those notes contain.

**THE COURT:** So, in other words we need to deal with each document on its own.

**MR. BATTISTON:** Whatever the handwritten notes are - yes.

**THE COURT:** Well, I'm not sure what's in there.

**MR. BATTISTON:** Yeah, I'm not sure - there's so much...

**THE COURT:** We're going to have to go tab by tab, depending on what Mr. Ellis wishes to proffer as evidence.

**MR. BATTISTON:** I don't have - as I say the reports filed by the authorities, the By-Law people and the Police Services, I agree should be tendered for the truth of what's in those documents. The other documents, there are so many of them, I'm not quite sure where to start but if they're handwritten notes, I do want to hear *viva voce* evidence in support of those notes and not - that they not be used as a primary source of the recollection. There should be recollections that this witness should be able to testify but without relying or looking at those notes. So, I think...

**THE COURT:** Well surely, you're not suggesting she can't refresh her memory?

**MR. BATTISTON:** She can of course, yes.

**MR. ELLIS:** I'll do the books one at a time, Your Honour.

**THE COURT:** Assuming that....

**MR. ELLIS:** Book 2 is the book that he's talking about. It's my client's journals that she wrote...

**THE COURT:** Oh, I see.

**MR. ELLIS:** ...during this situation so those are the handwritten notes that my friend is speaking of.

**THE COURT:** Well certainly you're going to want to cross-examine on those Mr. Battiston?

**MR. BATTISTON:** Mm-hmm.

**THE COURT:** Correct?

**MR. BATTISTON:** Yes, sorry, yes.

**THE COURT:** Yes. So then for Book 1 we can mark that as Exhibit 1? Is that satisfactory to the parties?

**EXHIBIT NUMBER 1:** Plaintiffs Book 1 - produced and marked

**MR. ELLIS:** I have a copy for Your Honour and one for the witness. I'll provide the witness a copy.

**THE COURT:** Thank you.

**EXAMINATION IN-CHIEF BY MR. ELLIS:**

Q. Can you tell us how long you've lived at the - your family's lived at the address at 542 Elgin Street.

A. It's 540, 542 is Mr. Buonviveres'.

Q. Sorry, I apologize.

A. My parents purchased the house in May of 1975.

**THE COURT:** And we're talking about Cambridge, just for the record, so this is clear.

**THE WITNESS:** Yes.

**THE COURT:** And you said the parents purchased the house?

**THE WITNESS:** Yes, my parents, I was just a child.

**THE COURT:** All right.

**THE WITNESS:** And, my parents still do own the house. So, they have resided at 540 Elgin Street North since 19 - what did I say, I just went blank again - 1975, they purchased the house. They've lived there for years. Never had any problems with disturbances, nuisances or anything like that. Mr. Buonviveres had purchased the house - about six years ago. Previous to Andrew and Jacqueline he had two different tenants in

there. One were a bunch of girls that were living there...

**THE COURT:** I'm going to interrupt you right there.  
I apologize.

**THE WITNESS:** It's okay.

**THE COURT:** I have to take notes of your evidence and  
you're speaking way too quickly for me number one..

**THE WITNESS:** Okay, sorry.

**THE COURT:** ...to even understand what you're saying  
and number two to take notes. So please speak  
slowly, don't volunteer. You wait until your counsel  
has asked you a question. Answer it. Wait for  
another question. Answer it. But, please do not  
speak in a running commentary because I'm not going  
to get half of what you're saying. So, what I've got  
since your last statement was Mr. - I don't even know  
his name because I didn't even hear it correctly, but  
I've got Mr. B purchased. That's what I've heard.

**THE WITNESS:** Okay.

**THE COURT:** Okay, so let's begin or let's go back to  
the part after your parents had bought it in 1975 and  
they lived there for years without any problems.  
Mr. Ellis, please ask questions.

**MR. ELLIS:** Q. When did the - when did the issues  
happen...

A. The issues....

Q. ...that we are here today to speak about?

A. The issues started in February of the year that  
Andrew and Jacqueline had moved in.

Q. And, what year was that?

A. I'm not sure if it was 2013 or 2014. It went on  
for twenty months so if they moved in 2013 - so 2013?



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**THE COURT:** And when you say Andrew and Jacqueline are you talking about the defendants Andrew Dooling and Jacqueline Ferguson?

**THE WITNESS:** Yes.

**THE COURT:** It has to be clear. It has to be clear not just for me but for the record.

**THE WITNESS:** Okay.

**THE COURT:** Because the Court Clerk's taking all of this information down. We need to have a proper transcript in the event that any of the parties in this room ever would like to appeal.

**THE WITNESS:** Okay.

**THE COURT:** All right.

**THE WITNESS:** Sorry, I've never been in court before.

**THE COURT:** That's All right.

**MR. ELLIS:** Q. So, if we can go to Tab 1 and go to page one. Do you recognize this document?

A. Yes, it's the journals that I kept. I originally started based on research with hand journals and then decided to start keeping an electronic version of the journals and also e-mailing them to the By-Law officers.

Q. Okay.

**THE COURT:** Okay, what I've got are just e-mails. Is that what I'm looking at?

**MR. ELLIS:** Yes.

**THE WITNESS:** That one, yes.

**THE COURT:** So, they're not truly journals. They're e-mails?

**THE WITNESS:** They're e-mails of a journal, yes.

**THE COURT:** E-mails of the journals?

**THE WITNESS:** I do have a journal that...

**THE COURT:** ...has exactly the same information in it?

**THE WITNESS:** No, I did it electronically. Some of them are letters and then some of them are journals also.

**MR. ELLIS:** Q. Can we go to page 2?

A. Sure.

Q. Do you recognize this page?

A. Yes, I do.

Q. And, what is this page about?

A. Just let me quickly - this is when I was asking for the information of freedom from the By-Law officers and also below which is April 5th I was noting to By-Law regarding the noise that we were hearing - the bass noise.

**THE COURT:** I, once again am going to stop you and I apologize. Page 2 has a lot of writing on it.

**THE WITNESS:** Yes.

**THE COURT:** So, what are we looking at first? Are we looking at the bottom of the page where it says, April 4th or are we looking at the middle of the page where it says April 5th or are we looking at the top of the page where By-Law responds?

**THE WITNESS:** Well, at the top of the page where I had noted - which is when I was requesting freedom of information and they were letting me know the process. The middle of the page which is April 5<sup>th</sup>, noting the noise complaint for that day that had started at 6:30, once again we were dealing and following-up that they had contacted Joe - Joe had been involved with what was going on because we had asked - 'cause the house belongs....

**THE COURT:** Who is Joe?

**THE WITNESS:** Joe Buonvivere, the landlord. Because

it was his property, I felt that due to the responsibility of the landlord that they should let him know what was going on with the issues with the tenant, with Jacqueline Ferguson and Andrew Dooling.

**MR. ELLIS:** Q. And, the bottom of the page?

A. And the bottom of the page was April 4th with another journal of what was going on, the fact that I was awakened during a nap to the loud bass noise. I asked to have somebody come to the house and asked if they could have it turned down considering the fact that bass noise was - I was awakened in my room.

Q. Okay.

**THE COURT:** All right. What are the blacked-out sections?

**THE WITNESS:** That's just my personal information. My e-mail addresses for confidentiality.

**MR. ELLIS:** Q. Can you go to the next page?

A. Okay.

**THE COURT:** Page 3?

**MR. ELLIS:** Yes.

A. Once again March 30th at the top noting that By-Law officer Shawn Elliott was - had been down to the house on Saturday. It was better - he has a - Mr. Dooling has a speaker system that's connected to his tv and also plays the music.

**THE COURT:** Where are you reading from?

**THE WITNESS:** March 30th.

**THE COURT:** It says,

[As read] Shawn was here on Saturday as we had to call again due to the music and explained the situation with no By-Law officer in the evening.

**THE WITNESS:** Mm-hmm. Yes.

**THE COURT:** And by Shawn, you mean Shawn Elliott?

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**THE WITNESS:** Shawn Elliott, the By-Law officer, yes.

**THE COURT:** For the City of Cambridge?

**THE WITNESS:** The City of Cambridge.

**THE COURT:** And then,

[As read] Today was better except for the tv during the *Walking Dead* but it has been worse but who knows how long it will last as they are good for a few days after visit then start back up.

**THE WITNESS:** Yes.

**THE COURT:** Okay, so where's the part about the stereo system?

**THE WITNESS:** Well, I was just explaining the stereo system that's causing the bass noise and the fact that it's....

**THE COURT:** That's your evidence that's not what you're writing about?

**THE WITNESS:** No. The fact that I was - they were watching the *Walking Dead* and because it's also connected to the tv, I could also hear the vibration and the bass noise from the background from the tv into our house. And, he had said that Shawn was trying to take steps to help him resolve the issue and once again when By-Law seems to be arriving there's also where they lowered the noise and they don't really hear what's going on because sometimes - and this is not in there - where they'll go knock on your door first and they've noted in their case laws - freedom of information that they cannot hear it outside their door - Mr. Dooling and Ms. Ferguson's door.

**MR. ELLIS:** Q. Can you carry on with the....

A. On March 28th we had to listen to an hour and a half straight of bass noise and that we were just you know frustrated. On March 28th - just talking about nothing was being done by the By-Law, the Police. How my parents and I are, you

know have been frustrated regarding the situation to the bass coming through the walls from the music and the tv and just commenting Mr. Buonvivere rents 542 Elgin and not 540 so how was it we don't seem to have any rights to our enjoyment and this was continuing on. And, just wondering what was being done to resolve this and how we were going to resolve the issue.

Q. Okay.

A. It was due to frustration. We were frustrated it had been ongoing 'cause this is March, so it had gone ongoing for over almost two months at this point.

Q. And, who are these e-mails going to?

A. These e-mails were going to By-Law. Sometimes they would also go to the police department but just so that By-Law could look because and this is additional information. I did some research and researched other cities that said to maintain a journal and they would use their evidence based on the journal of how often this was happening to look at positions on noise nuisance. So, I started maintaining a journal and originally, I started with the handwritten ones, which is why there's handwritten notes and then I decided to go to the electronic versions and send them off to By-Law.

Q. Okay, can we go to page 4?

A. Mm-hmm. This is where I was hoping to have a supervisor from By-Law call to see if somebody could follow-up you know. The fact that here's another situation where we'd been listening to fifty-five minutes of the boom, boom, boom coming through our walls you know like just listening to this constantly and the fact that with listening to you know three to four hours at a time both in the morning and evening for a total of six to eight hours a day sometimes.

Q. Okay, page 5?

A. I sent this at 8:55 p.m. The fact that we're still getting bass noise coming through the wall but the fact that its faint so they're showing that they were able to turn it down to the point that you could hear - almost hear it was faint but it wasn't as disruptive so when they wanted to they could turn it down but they chose to have the bass at a certain level that was continuously we felt invaded and was creating a nuisance in our home and stress.

Q. The next e-mail?

A. The next e-mail was at 8:40 where on May 29th - sorry....

Q. Actually, can we go to page 6 because it appears the e-mails are going backwards.

A. Oh, it's going backwards on that one. This one is that on May 29th at 8:03. Once again, we were getting bass from the tv and it was blaring through the wall and when it was....

**MR. BATTISTON:** Sorry to interrupt, you referred to page 6?

**MR. ELLIS:** Yes.

**THE COURT:** Yeah, the handwritten six at the bottom.

**THE WITNESS:** The original one, I don't know.

**THE COURT:** It's a very lengthy e-mail actually, it's just like a full page.

**MR. ELLIS:** Yes, May 29th, 8:03 p.m.

**MR. BATTISTON:** I'll wait to hear but if this is going to continue, I need to know what the reference is. I don't have that.

**THE COURT:** No, absolutely.

**MR. ELLIS:** Oh, sorry. That's not number to your book.

**MR. BATTISTON:** The whole book? Well, you're going to go through the whole book?

**MR. ELLIS:** Well, I wasn't going through the whole book. I was going to through part of it, but I have a feeling I'm going to need to go through it all in order to put it into evidence.

**MR. BATTISTON:** I need to know what you're referring to.

**THE COURT:** Mr. Dooling and Ms. Ferguson, do you have copies of this big book in front of you?

**MR. DOOLING:** Not in front of us, no. We do have a copy of it at home though.

**THE COURT:** Oh, so you didn't bother to bring it?

**MR. DOOLING:** I didn't have a forklift to bring it with me.

**THE COURT:** Well, I'm able to lift it up without a forklift so I assume you could do as well, so I'll ask you to keep your sarcasm to yourself.

**MR. DOOLING:** Sorry.

**THE COURT:** Mr. Battiston?

**MR. BATTISTON:** Is your's numbered, Your Honour?

**THE COURT:** My pages are numbered but maybe that's because I was lucky enough as the Judge to get a numbered brief but this is - if you look at the top it says, we're onto another e-mail string altogether so it starts with page one of three on page 5 and then it goes to page two of three which is hand numbered number six. At the very top it says, Cesaltina and then says, On Thursday May 29, 2014 8:03 p.m. Cesaltina Fiuza wrote. Now it doesn't say who it's going to or anything like that, but it is a

full-page e-mail sir and it looks like that. There's only one redaction and that's at the very top of the page after her name. That looks like it could be it.

**MR. BATTISTON:** That's page 6?

**MR. ELLIS:** Yes.

**THE COURT:** Page 6.

**THE WITNESS:** Page 6 is page two of three and page one of three on page 5 shows that it went to By-Law.

**MR. ELLIS:** Q. So, what was this e-mail about?

A. This one was once again complaining about the tv blasting through the wall, the bass noise. The fact that I had my neighbour from 538 Elgin Street North, Shara Fryer, come over and witness the noise.

**THE COURT:** Who is that?

**THE WITNESS:** It was a neighbour of ours.

**THE COURT:** And her name please?

**THE WITNESS:** Shara, S-H-A-R-A.

**THE COURT:** And her last name?

**THE WITNESS:** Fryer, F-R-Y-E-R.

**THE COURT:** All right.

**THE WITNESS:** She no longer lives there so I don't know where her abouts. I had her come over to witness the noise and if she was willing to provide a witness testimony. She gave us a handwritten one. By-Law and the Police did not interview her when I advised them of her.

**MR. ELLIS:** Q. Was there a by-law officer on call that night?

A. No, there was not. So, we had to continue to listen to - and, the City of Cambridge, when By-Law is not on duty will refuse service to a noise complaint.

Q. Okay.



A. And, I also advised her that I'd like to have Joe contacted to advise him of the situation and have him contact us so that we could - Joe Buonvivere, the landlord, so that we could try and resolve this matter.

**THE COURT:** And you're asking By-Law to contact the landlord?

**THE WITNESS:** Yes, because I don't have the landlord's contact information.

**MR. ELLIS:** Q. So, the next group of e-mails are - it says, one of eleven. So, the eleventh page is on seventeen and because of the way e-mails print out they're going backwards.

**THE COURT:** Okay, what I've got is on page 17 it says, page ten of eleven.

**THE WITNESS:** Yes.

**MR. ELLIS:** Oh, yes.

**THE COURT:** Page 18 is eleven of eleven.

**MR. ELLIS:** Yes.

**THE COURT:** And, these are printed in some format that it's really difficult to read since it's about a column long - wide.

**MR. ELLIS:** Yes.

**THE WITNESS:** Unfortunately, it's just the way it printed, sorry.

**THE COURT:** All right, so that e-mail that ends on page 18 in my book in any event starts on page 15 in my book and it says, May 30th.

**MR. ELLIS:** Yes.

**THE COURT:** From Cesaltina to By-Law again.

**THE WITNESS:** Yes. Once again, we had bass noise issues on this date.

**MR. BATTISTON:** I'm just trying to catch up to that,

sorry to interrupt.

**THE COURT:** Oh, you don't have it?

**MR. BATTISTON:** Well, it's not numbered again so I'm trying to figure out where we're starting.

**MR. ELLIS:** Yes.

**MR. BATTISTON:** I'm sorry, your book is numbered what?

**MR. ELLIS:** Fifteen at that page.

**THE COURT:** Which is the start of the e-mail that ends on page 18.

**MR. ELLIS:** Yes.

**THE WITNESS:** And, once again from this e-mail we were getting bass noise. It sounded like he was either playing video games or they were watching a movie 'cause the bass is different from the tv to the music. The fact that there was no By-Law officer on duty so we were not going to get any service and once again Police do not provide service when By-Law is not available and also if they could follow-up with Joe to let him know this is continuing. There's been another complaint regarding the bass noise so that he was aware of how many times that this was ongoing, this issue.

**MR. ELLIS:** Q. When you're e-mailing By-Law are you also calling By-Law?

A. I do call because at this point where I noted that there was nobody on duty I had already called. If it's after 5:00 you call into the Police Department and they will dispatch a call to By-Law. If they see By-Law is not on duty, they will refuse our call, they will not log it and then they will....

**THE COURT:** Who won't log it?

**THE WITNESS:** The 911 dispatchers. They will not log the call and then they will tell us - or they transfer us, but 911 dispatch will either transfer us or provide us a number to call By-Law and leave a message on their voicemail or when somebody may log in.

**THE COURT:** So, you're calling 911 for a noise complaint?

**THE WITNESS:** No, I'm calling the local number for the Police Department.

**THE COURT:** Okay, but you mentioned something about 911.

**THE WITNESS:** It's the Police dispatchers which I guess are also 911.

**MR. ELLIS:** Q. Okay. So, if we could go back two pages, oh one page, sorry.

A. Which page?

**THE COURT:** It's page 14 in my book.

**MR. ELLIS:** Q. Page 14.

**THE COURT:** It's page seven of eleven in the e-mail string.

**THE WITNESS:** Okay.

**MR. ELLIS:** Q. At the bottom.

A. It's 10:54 p.m. and it's showing us - I guess they had been watching previously - if you continue from page 13 to 14 they were - and at 10:54 p.m. it sounded like it was switched to music so they may have been watching tv and now we were getting the boom, boom, boom again from the bass noise from the music and that was at 10:54 at night.

Q. Okay, page 13?

A. They had turned it down a lot lower to the point where it was a lot - it was just more subtle and the fact that

the outside noise probably zoned some of it out and the fact that I guess they might have been yelling - I could hear that they were with their child because I'm guessing the child's room was next to my room.

Q. Okay, page 12?

A. Page 12, it's an ongoing e-mail where I called the Police Department dispatch and was advised there was no By-Law officer on duty and which meant - and I notice I had Joe's number and that I was going to see if I was going to be able to try and call him and get some support and that I would be sending a letter to the - a complaint letter to the City as I did not feel that it was appropriate for us to have to be listening to bass noise night after night after night.

**MR. BATTISTON:** Sorry, I'm losing track of what page we're on?

**MR. ELLIS:** We're on page 12.

**MR. BATTISTON:** I don't have page 12.

**MR. ELLIS:** You don't have five of eleven?

**MR. BATTISTON:** Five of eleven?

**MR. ELLIS:** At the top it will say, five of eleven.

**THE COURT:** The actual e-mail itself starts on page four of eleven and it's dated May 31st.

**MR. ELLIS:** Yes.

**THE COURT:** I mean it - perhaps it's better to give the date and the page number of the e-mail string so that Mr. Battiston can follow along because he doesn't have the page numbers. It also makes more sense to refer to the actual e-mail itself as opposed to a page where it's just an excerpt of an e-mail.

**MR. ELLIS:** Yes.

Q. We're looking at the bottom of page 11 which is

four of eleven, Saturday May 31st at the bottom.

A.

[As Read] The music started at 12:30 p.m., the bass noise. We were having to listen to boom, boom, boom, from the bass. Continuing on to page 12 where I had to call the police to get dispatch - to get By-Law dispatched and there was nobody on duty and that's where it continues that I'd be trying to call Joe to see if any - he could help out with the situation.

Q. Okay, so if...

A. And just comment on how we felt that we had no rights in our home. That you know we don't live next to a club and we don't live next to a movie theatre where we should have to be putting up with such noise on an ongoing basis and then at the bottom of page five of eleven at 11:25 I noted that the music was, the bass noise was finally turned off.

**THE COURT:** But, that's a different day?

**THE WITNESS:** Yes.

**THE COURT:** Okay.

**THE WITNESS:** On May 30<sup>th</sup>. That's the day before.

**THE COURT:** Okay. I think this is a convenient spot to have a morning break. We're going to break for ten minutes.

**CLERK OF THE COURT:** Order, all rise. Court is stood down until recalled.

**R E C E S S**

**(11:35:24)**

**U P O N R E S U M I N G :**

**(11:51:57)**

**CLERK OF THE COURT:** Order, all rise. Court is back in session. You may be seated.

**MR. ELLIS:** Should flow better now, Your Honour. I have his pages numbered up to 320.

**THE COURT:** Looks like you'll be busy at lunch Mr. Ellis.

**MR. ELLIS:** Yes, I will.

**THE COURT:** Okay.

**MR. ELLIS:** Q. All righty, if we can proceed. We were at page 11, middle of the page at Saturday, May 31st. Can you tell us about this e-mail that you sent?

A. May 31st, I'm just going to review it. This was advising that I had contacted Mr. Buonvivere, the landlord and advised him that the bass noise was ongoing as By-Law was not available and he said that he would contact his tenants to follow-up on the situation.

Q. Okay, page 10 at the bottom?

A. May 31st at 2:37 p.m. I was just noting that the bass had gone back up again.

Q. The e-mail up at the top that's 3:40 p.m.

A. At 3:40 that noting that the bass had been lowered but it was still annoying. A level that was still coming through and annoying us and that I had spoken to Joe once again to advise - if he would follow-up with his tenants and he said, no that he was at work and he did not have their number on him and I just did not feel this was acceptable as we're stressed.

Q. Okay, page 9, bottom middle of the page?

A. At the bottom from May 31st at 10:33?

Q. Yes.

A. That the bass noise was once again coming through the walls but it was a cooler day so the windows were open so hopefully that would have drowned out some of the noise which it did not seem to help much.

Q. Okay, page 8 near the bottom, June 1st 1:13 p.m.?

A. Once again, I had called By-Law and was advised that no one was on duty. Then I called Joe and advised that Shaun - and here apparently Shaun had been on duty and that Shaun had advised I guess that he had spoken to Joe and no one had followed-up with us and Joe pretty much said there's nothing he can do as his tenants are entitled to listen to music in their home; tired of constantly listening to bass noise on a daily basis through the wall. Once again people keep insisting that it's not that loud but once again, we're not complaining about the overall music all the time. It was about the bass coming through the constant ongoing bass noise. The boom, boom, boom.

Q. Okay.

A. And the fact that we had been listening to it for ten hours and we were just wanting some reasonable peace and just to have the noise removed from our home.

Q. Okay, if we can flip to page 19.

A. The fact that I knew there was no By-Law on duty, so I didn't call. The bass noise had gone up again. It was louder. Oh, I sent an e-mail to Shaun saying that the bass noise had gone up so - and that he had just left so the fact that it's louder than when he was in the house with us.

Q. And what....

A. They lowered it at 9:50 p.m. but from 7ish until 9:50 we were listening to bass noise, constant bass noise. It was no boom, boom music because there are different levels. Sometimes its louder sometimes its lower but it was just a

constant boom, boom, boom that was just coming - constantly coming through the walls.

**MR. ELLIS:** Sorry, Your Honour it appears that the next page is a duplicate of that page.

Q. So, page 21?

5 A. At the top at 5:26 the bass noise had stopped, and it looked like the neighbours had stepped out. Mr. Dooling and Ms. Ferguson had stepped out. They had played for twenty minutes at that point. There was nobody on duty once again. There was no By-Law officer on duty to assist with the situation.

10 Q. The bottom e-mail?

A. The bottom is noting that on June 11th that a meeting had been arranged between By-Law, the landlord Joe Buonvivere and with us where he went to the house to try and provide some resolutions. Tried calling and advised that no one was working so once again By-Law was not on duty. Called Shaun directly on his voicemail and said he was away from the office, so I did not leave a message. Once again even though By-Law and Shaun and Joe Buonvivere, the landlord had tried to provide some resolution when they attended the 542 Elgin Street North that the issue was still continuing, and nothing was - nothing had been resolved.

15 Q. Okay. If we can go to page 22?

20 A. Okay. Top of the e-mail at 8:34 p.m. - a.m. just talking about how tired I am as I didn't get enough sleep. I probably fell asleep for about another hour after he left for work, so the music had been playing earlier. The fact that even though they say it's not that loud when you're lying down in bed it's actually - the bass noise is actually worse. And, the fact that I was just noting that we go to bed between 10:00 and 11:00 and it would have been nice that if the neighbours would have the



music turned off so that we would be able to go to sleep at a reasonable time as I would have to go to work next day and it's just the hours that sometimes my parents would go - my mom at least.

Q. Okay. If we flip to page 25?

5 A. This is an e-mail to By-Law again for June 19th of the summary of the evening saying they had turned on the bass - the music in their home at 542 Elgin Street North at 4:45 p.m. It was louder for about twenty minutes and then they turned it down. Noting that it wasn't as low or to the level that when Shaun and - Shaun Elliott the By-Law officer and the landlord Mr. Buonvivere were there looking at resolutions. So I was saying it had gone back up even though we tried to provide resolutions and solutions to reduce the bass noise. I went outside in the backyard to get away from the noise 'cause after trying to fall asleep and listening to the music 'cause I listened the music was 10 playing until 1:30 in the morning the night before. When I came into the house at 7:00 p.m. it was turned off and I noticed a car was not in the driveway so that's why it had been turned off.

Q. Okay, page....

20 A. Actually, no hang on because it's always nice when they're not home because there's no bass but I noticed that upstairs - so there was a point where I guess they were finding problems with the bass that they started playing the music upstairs for a little while and that's where I was hearing it in the bedroom for whatever reason.

Q. Twenty-five.

A. That was twenty-five.

Q. Oh, twenty-six I mean, sorry.

30 A. That's okay. It's 9:29 p.m. I had gone up to my room. Bass noise was still playing. As you're lying down you

could just constantly listen to the bass noise thumping away. Some songs have more bass than others and the fact that when it's at a higher level if I am sleeping it will wake me up.

Q. So, the bottom e-mail at 2:54 p.m.?

A. Two fifty-four, once again we were having issues with the music. First it was the Sunday around 9:00 a.m. I had to call as the bass was really loud in the living room. I called and there was no one on duty and I had been awakened at 5:04 a.m. with the bass music coming into the bedroom also. Went upstairs to try and take a nap. I was awakened earlier and there was music coming through the wall again. It was a lower boom, boom but it still was a constant boom, boom, boom and just that - don't know and I kind of made a comment that I'm saying, I don't know why Joe had to buy the house because it's just been a nightmare since they had moved in. Just frustration comments.

Q. So, let's flip to page 34, Sunday July 13th?

A. This is July 13 where the frustrations of the ongoing day after day of having to listen with the bass noise, I just - you know frustrated how this can continue on as long as it has. Just - you know fatigue that - for not getting the proper sleep.

Q. Who did you send this e-mail to?

A. I sent it to the Mayor, and I sent it to Shaun Elliott at the By-Law officer in By-Law.

**THE COURT:** And who is the party that is blacked out?

**THE WITNESS:** That was my name.

**THE COURT:** In the to line?

**THE WITNESS:** Yeah, I cc'd myself.

**THE COURT:** Okay.

**THE WITNESS:** Once again advising that I'm hearing boom, boom, boom coming through the wall and the music that day

seemed to be louder because it sounded like I could hear some guitar. Usually we cannot hear any words for the most part or any singing.

**MR. ELLIS:** Q. Can you go to the beginning of the e-mail on the bottom of the page that continues on the next page?

A. Page 35?

Q. No, thirty-four at the bottom.

A. Okay.

Q. July 13th.

A. I had cc'd the mayor on this letter as I was looking for some help and resolution on the matter.

Q. Okay, page 35. The e-mail part way down, 3:25 a.m. July 13th?

A. The bass it was - awakened to the muffled boom noise. It was a little loud because we were also hearing the guitar coming through. It was between the guitar bass and the boom, boom, boom and that I was looking...

**MR. BATTISTON:** Sorry to interrupt. What page is that number?

**THE COURT:** Page 35.

**MR. BATTISTON:** Mine is thirty-three, so...

**MR. ELLIS:** Oh?

**THE COURT:** July 13th at 3:25 a.m.?

**MR. BATTISTON:** I have page 33, you said thirty-five.

**MR. ELLIS:** Okay, I apologize, Your Honour.

**MR. BATTISTON:** So, your thirty-five is my thirty-three?

**MR. ELLIS:** Yes.

**THE WITNESS:** So, a comment that I was going to call the landlord, Joe Buonvivere once again to see if he could do anything and just felt like we didn't have any rights in our home

anymore. Just comments to myself, to By-Law 'cause that went to By-Law.

**MR. ELLIS:** Page 37. Is your thirty-seven the same as mine July 19th 11:43 p.m.? Thirty-seven. Sorry I'm going to have to go through the book one at a time. I apologize, Your Honour. I think I'm going to have to go through the book one at a time in order to fix the pages for my friend.

**MR. BATTISTON:** What page?

**MR. ELLIS:** So, right now - that one there is page 37. Oh, no that one is right. That one there is page 36 and that one is 37. Sorry about that.

**THE WITNESS:** This one was on July 19th at 11:43 you could tell that he's either watching video games - playing video games or watching tv and it seemed that there was also bass noise. It sounded like it was coming from a different area, so I don't know what. I was just anticipating maybe it was the basement or if they had done something 'cause I could hear on the main floor and the two bedrooms along the walls and this was done at 11:43. So 11:43 we're still listening to bass noise coming through the walls and we were frustrated because we wanted to go to sleep and we had - we couldn't go to sleep and nothing was being done and then it kind of like - so at 11:20, try to contact the landlord Joe Buonvivere to see if he could help with the issue as there was no By-Law officer on duty. I got his voicemail. Trying to go to sleep, it's lower but it's not helping and just the frustration that something really needs to be done especially when it's bedtime like 11:20 and we still don't have any rights to go to sleep and the music continued on through hours of the night especially on weekends. And, also I noted on here that the sound was louder so I was hearing you know

some of the song and then it sounded - kind of sounded like there was music or tv or video games going on between the tv and the music and then below it's 11:05 p.m. Once again combined it sounds like it was the tv or video games. Slightly turned down but you could still hear it coming through the wall. And just the frustration going why do we have to keep hearing their bass coming from their tv or their stereo and seeing if Shaun could arrange something again with Mr. Buonvivere the landlord and the police and see if they could you know do something to help resolve this issue in our frustration.

Q. Okay. I'd like to go to - ours is page 40. It starts with, Sunday July 20th 8:46 a.m..

A. Okay, I'm noting here that the...

**MR. BATTISTON:** Hold on, hold on, sorry.

**THE COURT:** I would like to remind the witness to please slow down.

**THE WITNESS:** Sorry.

**MR. ELLIS:** Q. Now, I believe for this one we should go - because this is one of three so if you can go three pages in where the e-mail string actually starts.

**THE COURT:** The July 19th at 10:27 p.m.?

**MR. ELLIS:** Yes, Your Honour.

**THE WITNESS:** On July 19th....

**THE COURT:** Do you have that Mr. Battiston?

**MR. BATTISTON:** I have - yes that's - I've been directed to the right page.

**THE COURT:** Okay, we're starting with July 19th now.

**MR. ELLIS:** That's a one of three?

**MR. BATTISTON:** One of three.

**THE COURT:** Okay.

**MR. ELLIS:** Oh, is that the right page? Yeah, no, one more page.

**MR. BATTISTON:** I've got one of three, two of three.

**MR. ELLIS:** Yes, so we're starting at three of three.

**MR. BATTISTON:** Three of three.

**MR. ELLIS:** There we go.

**MR. BATTISTON:** Which is page 42?

**MR. ELLIS:** Yes, it is.

**THE WITNESS:** And here on July 19th at 10:27 p.m.

once again noting that we're getting the bass noise coming through the wall. Some songs it fluctuates up and down due to the variance of the songs. There was once again no By-Law officer on duty. Been listening the past fifteen minutes. It actually woke me up last time and just commenting why I don't understand addressing the bass is such an issue in the home. You know just frustration of where I'm speaking to By-Law and Shaun Elliott saying, I don't understand you know, we've never had this problem since people lived there with constant bass noise coming through the wall and it's also coming into the basement and once again no one on duty. If it's not turned down in fifteen, twenty minutes I will be once again be contacting the landlord, Joe Buonvivere to see if he could help address the issue.

**MR. ELLIS:** Q. Okay, so page 41?

A. Once again at 10:42 I'm saying I can't hear the words of the song, but we can hear the bass. At 11....

**MR. BATTISTON:** I have to fix the pages again. What page did you refer to?

**MR. ELLIS:** Forty-one. At the top it's page two of three of that e-mail.

**THE COURT:** Are we looking at July 19th at 10:42 p.m.?

**MR. ELLIS:** Yes.

Q. What were you saying about that e-mail?

A. Once again you could not hear the song, but you are hearing the bass. That's what it says here I could not hear the song, but it was not as loud. At 11:05 you could hear the tv or the video games were going cause based on the information I was provided from By-Law, Shaun Elliott the speakers were connected to the tv and to the stereo system.

Q. The top e-mail?

A. That's at 11:20 where I called Joe Buonvivere, the landlord to see that if he could address the issues with his tenants as no By-Law officer once again was on duty and that I was going to try and go to sleep and hoping that it doesn't go on all night again.

Q. So, if we can go to page 40 at the top, Sunday July 20th?

A. The music was on here until 11:53 p.m. Looks like I fell asleep shortly after. Sound like a slight echo from the music. Like I actually had to kind of listen going - I listen to music so maybe the bass was turned down and just noting that I needed to call Joe, the By-Law. Called Joe twice around 11:00 p.m. and 11:20 p.m., Joe Buonvivere the landlord. Got his voicemail both times and just noting that during the day they had started playing music at 10:00 at night when people are getting ready to go to sleep. And the fact that Jacqueline had been home it wasn't a problem and then come bedtime and the music starts so it's not just something that's during the day but it's bedtime and they're starting to play the bass noise and just you know frustration comment on we need to address this issue and get the bass noise out of our home.

Q. If we can go to page 43, that one is the Sunday July 26th at 2:20?

A. On July 26<sup>th</sup> at 2:20 a.m. I was awakened from the boom, boom, the bass noise from the bass coming from 542 Elgin Street North and just my frustration where I'm like, am I not entitled to sleep in. You know the fact that it's calling - you know it's on at this time of the night and I called By-Law and called Joe Buonvivero the landlord and left a message and I left a message with By-Law Shaun and advised him that I wanted to speak with him when he got back. Shaun Elliott and then it sounded like at that point as I was making the calls that it was just - it was just turned off and there was silence.

Q. Okay, if we can go to the next page.

A. At 3:57 on July 26th the music is off 'cause it looks like they were stepping out. I did go downstairs out of my room and I did notice that - to confirm that it was not being played so did not hear it in the main level and the bedrooms and I also saw no car. I was just maintaining these journals because so that we can back up when music is off, if they were home or not home. And I called Marie Josie regarding mediation and left a message with Shaun once again too. I spoke with - I left - on the message here 'cause it went to Shaun Elliott that I'd like to speak with him after 5:30 p.m.

Q. Okay, can we flip to the next set of e-mails which is one of three, so we're start at page 49, which is two of three. Two of three has nothing on it, that one is at the very bottom it says, Sunday July 27 12:54 a.m..

**MR. BATTISTON:** What page is this?

**MR. ELLIS:** Forty-nine.

A. Okay, I've got on July 27<sup>th</sup> at 12:54 a.m. I once again had been awakened from my sleep due to bass noise coming



through and it sounded like it was either the tv or video games and just noting my frustration, it's not the music, the bass from the music it was the bass from the tv or the video games. At 12:58 followed-up where it was definitely the tv because with the tv - it's almost like a movie theatre where you're getting the rumblings from all the sound effects and spoke with my dad who was also awake at that time and he advised that the music had been on earlier and that the tv started around 12:30 and then at 1:06 a.m. saw that they were sitting on their porch out front at 1:06 a.m. They saw me and Andrew yelled, what now. I told him their tv - told them their tv was rumbling into our home and closed the door - and I guess they closed the door.

**MR. BATTISTON:** Sorry to interrupt. I'm lost. Mr. Ellis. What...

**MR. ELLIS:** Same page.

**MR. BATTISTON:** Where is this evidence coming from, what page?

**MR. ELLIS:** 49.

**MR. BATTISTON:** Which is one of three or two of three?

**MR. ELLIS:** Two of three.

**MR. BATTISTON:** Wrong page. Hold on.

**MR. ELLIS:** Halfway up, July 27th 1:06 a.m.

**THE WITNESS:** 1:06 where I noted mister....

**MR. BATTISTON:** No, I'm not getting that. I not getting that. That's forty-nine. Okay, now I got it.

**THE WITNESS:** Where Mr. Dooling and Ms. Ferguson were sitting on the porch smoking 'cause I - the light was on so I noticed and I had opened the door and asked them to - he yelled at me - Andrew Dooling yelled at me and said, what now and I

5 advised him that the tv was rumbling into our home and they went inside and closed the door. At the top, which is a continuation from page 48, it's 1:16, my mom's also been awake - awaken so we're all awaken at this time 'cause I had spoken to my dad at 12:58. We're all fed up and you know tired. We feel that we've lost our rights to even sleep. I went to bed at 9:30 trying to sleep as the night before I did not sleep well. The weekends - like what the hell - these weekends lately as the weekends carried on to all hours of the morning and the fact that Mr. Buonvivere had - when I contacted Mr. Buonvivere, he had accused me of harassing him and his tenants and said....

**MR. BATTISTON:** Is that in an e-mail somewhere, are you referring to a document?

15 **THE WITNESS:** I'm being accused of harassing them and there's an e-mail earlier where you'll see I had spoken to Mr. Buonvivere. I'm sure it's in here because I remember the conversation where I had spoken to Mr. Buonvivere and he said - I advised of the situation of not being able to sleep and he told us to put ear plugs in and that I was harassing.

20 **MR. BATTISTON:** Are you referring to a document here Mr. Ellis?

25 **THE WITNESS:** That was no - that was not in - no. I'm not sure if it's there but I do remember that conversation and a conversation with Mr. Buonvivere where he told me to put - told us to put ear plugs in if we wanted to sleep and that we were harassing him and his tenants and stop calling him.

**MR. BATTISTON:** What date was that?

30 **THE WITNESS:** I don't remember the date. I'd have to see if I have the notes in here, but I did have a conversation - it's one of the conversations when I spoke to him. I'm pretty sure it's been noted in here but like I said this is the -

written years ago so I don't got everything written by dates unless I'm reviewing the notes here. I do remember the conversation I just can't tell you which date that was.

**MR. ELLIS:** Q. If you can flip to page 54 which is dated Wednesday July 30th at 11:32 a.m.?

**MR. BATTISTON:** Sorry, I have to catch up. Just a minute. Three of three was fifty.

**MR. ELLIS:** Yeah.

**MR. BATTISTON:** What page?

**MR. ELLIS:** Fifty-four.

**MR. BATTISTON:** July 30th?

**MR. ELLIS:** Yes.

**MR. BATTISTON:** 11:32 a.m.?

**MR. ELLIS:** Yes.

**THE WITNESS:** May I comment on his - I've got here on July 27th on page 48 where I spoke to the landlord and he has not contacted us - I don't want to speak with him - where is it here.

[As read]He did not say anything further as...

**THE COURT:** Where are you reading?

**THE WITNESS:** I'm trying to read the paragraph; I think it's going to the third.

**THE COURT:** Tell us what paragraph you're reading from.

**THE WITNESS:** Looks like it's the fourth.

...did yesterday after the situation with Joe it is better left with the law, so, although not happy not more can be seen to be done and that they are - and what they are doing seems to be not enough.

**THE COURT:** All right. Does that start with,

52.

*Fiuza v. Creekside et al.*

C. Fiuza - in-Ch.

[As read] Did not say anything further thEn was awakened due to their tv and some ramblings and also being awakened yesterday as after the situation with Joe it is better left to the law?

**THE WITNESS:** Yes.

**MR. BATTISTON:** I don't see that. What page?

**MR. ELLIS:** 48.

**THE COURT:** It's the fourth paragraph, the e-mail July 27th at 8:00 a.m. It's actually page one of three.

**MR. ELLIS:** Yes.

**MR. BATTISTON:** July 27th?

**MR. ELLIS:** At 8:00 a.m., one page before that.

**MR. BATTISTON:** I've got a blank page.

**MR. ELLIS:** Missing that page.

**MR. BATTISTON:** It's missing?

**MR. ELLIS:** Well it must be. You said the next page before that is blank.

**MR. BATTISTON:** 8:00 a.m.

**THE COURT:** I think that's a good time to break for lunch. We're going to break for an hour and a half and hopefully during that time you'll get the issues...

**MR. ELLIS:** I will fix counsel's book.

**THE COURT:** ...straightened up with Mr. Battiston's document brief. So, we will return here at 2:00 p.m.

**CLERK OF THE COURT:** Order. All rise. Court stands recessed until 2:00 p.m.

**R E C E S S**

**(12:26:13)**

**U P O N R E S U M I N G :****(01:59:37)**

**CLERK OF THE COURT:** Order. All rise. Court's back in session. Please be seated.

**THE COURT:** All right. I hope the briefs are all straightened out.

**MR. BATTISTON:** Except for one. What do you want to do about this one?

**MR. ELLIS:** I'll swap you if you want. I missed one of his books, Your Honour. I went through everything from Tab 1 and wrote it all, made sure that all the numbers matched and the other book.

**THE COURT:** Okay. All right. I have that we left off at page 48...

**MR. ELLIS:** Yes.

**THE COURT:** ...which is an e-mail dated July 27th, 2014.

**MR. ELLIS:** Yes.

**THE COURT:** Okay.

**THE WITNESS:** On paragraph 3 for July 27th at 8:00 a.m. I - you know I had noted that it felt like nobody was helping us, no by-law. When the music was - the landlord when I was following-up he suggested that I was harassing him and his tenants and just...

**THE COURT:** Where does it say that?

**THE WITNESS:**

[As read] With the landlord for assistance and I am not harassing. They are being invasive and disruptive in our home and trying to get something - trying to do something now means that we are now harassing...

...which is my comment saying based on a conversation I was commenting on how I was being told I was harassing. I will not be following-up with Joe again and he is not to contact us either and I said, I don't want to speak with him. This is our home not a business. So as of July 27<sup>th</sup>, that's where it stood.

**THE COURT:** When you say, did not want to speak with him you meant Joe?

**THE WITNESS:** Yes, Joe the landlord.

**MR. ELLIS:** Q. If we can go to page 54?

A. This was an e-mail to By-Law asking for a list of all the dates for the noise complaints that we had up to this point and I informed that at the time when we were discussing mediation that Andrew Dooling had turned down mediation. I was informed and so we were just going to try to proceed with - I was trying to proceed with charges for By-Law charges on my own.

Q. Okay. Page 55, e-mail at the top. I guess at the bottom, sorry at the bottom first from bottom to top.

A.

[As Read] August 1<sup>st</sup> at 5:58 p.m. Once again we were getting bass noise, the boom, boom, boom and it's throughout the house, in the living room, the kitchen, the two bedrooms and it can also be heard in the basement so it's heard throughout the house and once again there was no By-Law officer on duty and we had nobody to speak to and assist us in the matter. And, called the neighbour over to witness the noise once again which was Shara Fryer.

Q. Page 56?

A. Once again, I put a call to By-Law saying that we were getting bass noise from the neighbours.

**THE COURT:** That's not what I'm looking at.

**MR. ELLIS:** No.

**THE WITNESS:** For August 1st?

**MR. ELLIS:** Q. At what time?

A. Six nineteen.

**THE COURT:** Well it looks like it's going to the police with a carbon copy to By-Law, is that correct?

**THE WITNESS:** Oh, yes Constable Neilson.

**MR. BATTISTON:** Sorry, what page are we dealing with?

**MR. ELLIS:** Fifty-six.

**MR. BATTISTON:** I'm missing 56.

**MR. ELLIS:** You are? Forget it, Your Honour, I'll go past it.

**THE COURT:** We're ignoring that?

**MR. ELLIS:** Yes.

Q. 58, August 7th, 4:44 p.m.

**MR. BATTISTON:** Got it.

**THE WITNESS:** A. Once again advised that we were getting bass noise that on Thursday August 7th at 4:16 a.m. I was awakened due to thump, thump, thump from the bass. It looks like they may be trying to do something but we're still getting bass noise and I'm just commenting will I ever be able to sleep again as no one is doing anything and the hours of the night but this continuing to - that it's disrupting the sleep in the house.

**MR. ELLIS:** Q. Fifty-nine.

A. Once again, another e-mail to By-Law. There is no one on duty and we are having to listen to bass noise once again. Noted that we have company visiting from California and how my aunt was surprised by the loudness of the bass coming through and I was hoping that somebody would be coming through -

it started at 6:15 and asked for a copy of the case numbers for my records.

Q. Sixty?

A. Had been outside, came in and sounded like the bass noise had stopped. I'm not sure when as I had been outside and then on August 16th which is at 11:04 I'd put another call into for noise complaint and once again there was nobody on duty and I'd gone outside to get away from the noise.

Q. Let's jump over to 63 at the bottom of the page, August 20th, 6:07 p.m.

A. I get home at 5:30 from work and once again shortly....

**THE COURT:** Which one are we looking at?

**THE WITNESS:** August 20th at 6:07 p.m.

**MR. BATTISTON:** At the bottom?

**MR. ELLIS:** Yes.

**THE WITNESS:** I get home at 5:30 p.m. from work and bass noise starts shortly thereafter. Once again there is no By-Law officer available on duty and just commented on how this is interfering on the quality of our life and the enjoyment in our home.

[As read] Once again like yesterday this is going to be a long night as music was yesterday until 9:00 p.m. and I guess it will be the same.

Q. Page 65?

A. This is - I had a conversation with Shaun Elliott, the By-Law officer and advised the bass noise had been turned off at 6:30 p.m. but when they arrived home they had turned on the music again and we were getting bass noise again which was heard throughout the house, the living room, kitchen, basement and the main bedrooms.



Q. Sixty-six?

A. Once again this is an e-mail to Constable Nielson asking for help and saying you know the matter has gotten worse and I'ts louder and it's just everyday now so it was a day after day and we're just looking for help 'cause we're frustrated and just can't take the bass anymore and we're at ends' wit with the situation.

Q. Page 67, starting at the bottom?

A. Starting at the bottom, once again we're getting loud bass coming into the home. Just that this is you know advising Ryan - Ryan, I don't remember his last name. He's a By-Law officer. This has been an everyday occurrence lately and you know we're hoping that this will stop soon and then at 5:35 the noise had gotten louder since Ryan here - I guess after he had left - since he had left.

[As Read] Can't take this anymore, can be heard in our living room, kitchen and bedrooms. At 9:44 p.m. it's almost 10:00 p.m. the music has not stopped since 5:30 this p.m. and you can't even go to bed as the bass is loud in the room and of course at this point there is no By-Law officer on duty.

Q. Page 68.

**THE COURT:** Mr. Elis can you slow down a bit please.

**MR. ELLIS:** Oh, sorry.

**THE WITNESS:** August 23rd....

**THE COURT:** Please, just slow down a bit. I'm trying to make notes.

**THE WITNESS:** Okay.

**THE COURT:** All right. Mr. Ellis.

**MR. ELLIS:** Q. Page 68?

**THE WITNESS:** August 23<sup>rd</sup> at 10:13 p.m. Once again tried calling and no By-Law officer on duty. I was tired and wanted to go to sleep and the tv is going so we're getting rumbling from the tv. I guess it's going to be a long and sleepless night. Hoping someone available to come out to get him to turn it down so we can go to sleep. Trying to go - going to try sleeping on the couch in the spare room.

Q. Did it help moving into the spare room?

A. Well it was a little lower - it wasn't as loud 'cause you could hear if the door's closed, but the fact is that I was sleeping on a couch that was not comfortable, so I did not sleep well that night.

Q. Page 69?

**THE WITNESS:**

[As read] Put another call into By-Law as noise loud and would like to speak to Ryan. Asked for Ryan to call as no use - he stopped by as no one willing to do anything. Would like to speak to Ryan as would like to know if he would - if - spoke regarding the music at night as last night played until just after midnight. No one on duty and would like to know the last By-Law officer on tonight as if this continues, I would like to have someone come out tonight. Waiting for call, this is so frustrating.

Q. Page 70 at the bottom?

A. An e-mail to Constable Neilson, [As Read] advised an officer - the officer here yesterday advised that our case was being sent to a depth call HUB where you would send someone to review the situation, if that's still being done.

Would like to talk to them about it as something we want to consider but do not want Andrew to know they are here for an accurate assessment, which is Andrew Dooling.

Q. And the middle e-mail back from the police?

**THE COURT:** Can we just - please slow down, please.

**MR. ELLIS:** Oh, sorry.

**THE COURT:** All right, the next one you want to talk about is August 26th at 9:47 a.m.?

**MR. ELLIS:** Yes.

**THE WITNESS:** Constable Neilson responded and said that it would not be put through as he thinks the officer had a misunderstanding of what the HUB is. It's a review process for mental health investigations which we had discussed the mental health of my parents at that time with the officer which is why it was brought up.

Q. Okay. Page 72?

A. It's another e-mail to By-Law saying that I'm not calling because you made it clear you're not going to - they're not doing anything about it but I want to go to bed and I can't because I'm getting heavy bass noise into the bedroom. I'm going to sleep on the couch in the spare room once again. The only way I can go to bed. My mom is trying to sleep with ear plugs. Does someone know of a good recorder that can purchase - record bass noise. Any suggestions would help, desperate for advice.

**THE COURT:** All right.

**MR. ELLIS:** Q. Page 74?

A. Is it possible to get the rest of the case numbers? This is going to Shaun Elliott, the By-Law officer. Can't wait to go to court as the matter has gotten worse and they

are playing over thirty plus hours of bass - of music which is bass noise. Still can't believe this is allowed.

**THE COURT:** What do you mean by playing over thirty plus hours of music? Like continuously?

**THE WITNESS:** Yes. Well, not continuously but throughout the week so we've had up to sixteen hours of music in a day of bass noise coming through our wall.

**MR. ELLIS:** Q. Page 77?

A. Once again bass noise from 532 Elgin Street North. It had been good for a little while. It seems that they were good for a while and when the daughter going to school, they had it at a reasonable level. I now have a decibel meter to record the level and recording on my phone to show how high getting.

**THE COURT:** What did you know about their daughter? How old was she?

**THE WITNESS:** I'm not sure how old she is but I know that they have shared custody from the oldest daughter 'cause it seemed that there are times where someone would come to pick her up and she'd be gone a week at a time or on certain weekends. So on the weekends that she was gone it seemed like it was worse and I do know - I don't have the book but in December of 2014 I think - I'd have to look at my notes it's not in - it's in the other book they had twins so...

**THE COURT:** In 2014?

**THE WITNESS:** I think it's 2014, I'd have to - they'd have to confirm it. I'd have to look at my notes. I don't have it memorized.

**MR. ELLIS:** Q. Can you flip over to page 79? The e-mail in the middle for September 27, 12:21.

A. This is an e-mail going to By-Law where I was talking about decimal metres and just to get an idea of what the threshold was and for people to get an understanding. So yeah 'cause at this point at the top it says,

[As read] Listening to twelve hours of boom, boom, boom is not acceptable. If someone had a barking dog, they would have to quiet the dog but if someone listening to heavy bass music, nothing has to be done. Don't really understand the system.

So, By-Law doesn't understand decimal metres and they don't use a decimal metre reader to assess the noise, they just use their perception.

Q. Page 85?

A.

[As Read] September 28<sup>th</sup> at 10:51 p.m. I've been trying to go to sleep since 9:30 but cannot as I've got bass, boom, boom, boom carrying into my room. Can't call By-Law, they won't do anything about it, and they will just turn it up. Taken melatonin and sleeping pills and still struggling to sleep. Can't take ear plugs as I needed to hear all in the morning which is for my alarm. They were doing well for a few weeks during school nights because of daughter. Last few nights bass has gotten worse for bed - which is the bedroom. Don't even have rights to sleep. I'm almost ready with the - I'm almost ready with the whole container of sleeping pills, I just want to sleep, so tired.

Q. So then, the next one on page 86 is the beginning of one of three so we need to go to page 87, halfway down is the start of the first e-mail.

A. This is an e-mail to Constable Neilson. I spoke to the....

**THE COURT:** Are we looking at the one of 6:06 p.m.?

**THE WITNESS:** Yes. I spoke to the Assistant Director, City Director. She advised me that she had the police reports from the police. I advised her that I didn't have any hard copies. She said that she would give them to me. I'm not sure who sent them to her but advised that I should follow-up to inquire about getting a copy. I asked if it was possible to get a copy of the police reports, actually two copies unless the numbers you provided is sufficient for me to use in court. I'm asking for two copies as I need a copy to give to Andrew in court to provide him with disclosure.

[As Read] All - September 1st when school started the music got a little better especially since they have to put their daughter to bed for school so music being lowered between 8 to 9:00 p.m. Should be able to lower the music to an acceptable level but it is very subtle. They are playing more than - unfortunately they are playing more - 3:00 or 4:00 a.m. which sometimes wakes me up as I'm afraid to go to sleep during the week with ear plugs 'cause I do not hear the alarm. The biggest issue is Saturdays. They played for up to twelve hours and louder and sometimes really loud. I purchased a decibel metre and it bounced up to 81 db. That started at 10:30 a.m. and lowered around 12:34 p.m. but

still loud, that it is annoying. Today no one is able to sleep as it is in the basement, living room, my bedroom, kitchen and parents' room subtle. Until about 5:00 p.m. been 55 to 65 decibel metres, now 49 to 57. Having a hard time believing this is acceptable especially for up to twelve hours. How does no one recognizes the common law, law of nuisance where the landlord's right to use and enjoyment of his property does not give him the right to engage in activities that interfere with the right of neighbours to use and enjoy their own property. It interferes with their right to sleep, nap, enjoy activities in our home.

**THE COURT:** In that third paragraph that you've read out and you mention or you've written,

[As read] They put their daughter to bed for school so music being lowered between 8 to 9:00 p.m.

And then there's another sentence and then it says - then you say, unfortunately they are playing more at 3 to 4:00 a.m., so they're turning it down at 8 to 9:00 p.m. but turning it up at 3 to 4:00 a.m.?

**THE WITNESS:** No, usually on the weekends or they're playing from 3 to 4 if they don't have their daughter, they'll play 3 to 4. It's usually more - it was more of a weekend thing or if they were on holidays or on vacation, they were home or long weekends or something.

**THE COURT:** Okay.

**MR. ELLIS:** Q. Page 89?

**THE COURT:** Were we not going through that e-mail string?

**MR. ELLIS:** Oh, sorry, yes.

**THE WITNESS:** One eighty-eight, the other day I had my neighbour....

**THE COURT:** Sorry.

**MR. ELLIS:** Sorry. So, if you go to page 86 to the second e-mail in that e-mail string, halfway down.

**THE COURT:** Is there a response from - this is the response from Constable Neilson?

**THE WITNESS:** Constable Neilson, yes.

**MR. ELLIS:** Yes.

**THE COURT:** Two days later?

**THE WITNESS:** Yes. He advised me that in order to get the police reports I'd have to contact our Freedom of Information Branch to supply me with the records. He gave me the phone number to contact and the extension and ask for the instructions. Also providing information if I was looking to subpoena By-Law officers or Police officers for the trial date to do so as soon as possible. And, in regards to the common law he said it was a complicated explanation as to what common law is, but common law is not law that allows for charges to be laid against someone. It is a form of law that allows for the courts to hold someone accountable at time of a trial but there are no charges associated for - to anything in common law. It's hard to explain frankly. If I hadn't gone to school for as many years as I did to study law, I wouldn't understand it myself.

**MR. ELLIS:** Q. And, the rest of that e-mail on the top of the next page?

A. Constable Neilson again responding - no, that was from me to Constable Neilson thanking him for the update and will



follow-up with him tomorrow. If worst comes to worst, we just provide him with the information I had if I could get the Freedom of Information on time.

[As Read] Regarding the music, it has its good days. I have learned that he knows how to lower it when his daughter goes to bed during school nights and bad days, Saturdays have been bad and when their daughter does not sleep at home. This weekend was rough and last night. Like I said Saturdays got to 81 decibel metres. It actually worries me that I'm having a lot of anxiety and thoughts of dying as I feel that the only way to stop the boom, boom, boom - I don't know anything anymore. I know I'm tired. Something has to be done. This is not right, and no one should have to go through what we are experiencing.

Q. Page 89?

A. This is 10:04 p.m. on October 5th.

[As Read] Music playing again but they do not have their daughter so it's going to play 'til late, at least midnight. They already have - they have already had two visits and it turns - and turn it back after the By-Law - and turn it back up after By-Law leaves. Today has been a really rough day.

**MR. BATTISTON:** I'm not reading the same thing. Is that page 89?

**THE COURT:** Yes.

**MR. ELLIS:** Yes.

**THE COURT:** E-mail on the top. October 5th at 10:04 p.m.

**MR. BATTISTON:** Twelve forty-eight?

**MR. ELLIS:** Flip to the next page.

**MR. BATTISTON:** Is that what you just referred to now, that's ninety in this book.

**MR. ELLIS:** I know, in their book its eighty-nine. I know.

**MR. BATTISTON:** Can I recap for a second. So now all of the rest of them are going to be off.

**MR. ELLIS:** No, that one got switched around and I can't pull your book apart.

**MR. BATTISTON:** Can I just have a moment to connect to what she said to the document. One sec. Okay.

**MR. ELLIS:** Q. Page 93?

A.

[As Read] Oh my God I've been awakened by bass music playing at 4:26 a.m. [This is on Tuesday, October 7th.] These people just don't stop. Just 'cause they can't sleep doesn't mean they should disturb everyone else. Although it's not as loud during the day, bass louder than last night when went to bed. Laid in bed until the alarm went off at 6:25. I'm so tired. Don't even have a right to a good night's sleep.

Q. Ninety-four.

A. Noise turned down at 7:49...

**THE COURT:** Which one are we looking at?

**THE WITNESS:** Seven oh nine p.m.

[As read] Noise turned down at 7:49 to a more reasonable level although not as low as when they have their daughter and put her to bed. It can still be heard through - lightly through the

wall. Mom advised music was turned down - was turned on loud after someone came to pick up their daughter.

**THE COURT:** Okay, this is at 7:09 p.m. according to the date.

**THE WITNESS:** Yes.

**THE COURT:** But you've said the noise turned down at 7:49 p.m.?

**THE WITNESS:** Well yeah but it was - originally it started earlier so 7:09.

**MR. ELLIS:** Q. Yeah but is it possible that that 7:49 is 6:49?

**THE COURT:** It doesn't make sense. You're saying that it was turned down forty minutes later than you wrote the e-mail.

**THE WITNESS:** It might have meant the 6:49 when I came home because his daughter was picked up, sorry. Maybe it was supposed - no.

[As read] I've got here at 6:36, once again we're having to listen to bass music. Mom said it started at 6:05. I was not home yet. Once again no one on duty. All we are having to tolerate this. My parents are stressed and sick from this whole thing and so am I. I don't know how much more we can take.

**THE COURT:** Yes, but the other e-mail is dated October 7th at 7:09 p.m. and you've written noise turned down at 7:49 p.m. That's my point.

**THE WITNESS:** Yeah. It may have been a typo for 6:49.

**MR. ELLIS:** Q. Page 96. The e-mail at the bottom.

A.

[As Read] Once again having issues with noise from music. Started at 7:03 p.m. Started - with music and then switched to tv. Not as loud as other times but not as good as when daughter home. Seems she has been staying elsewhere. Actually, now sounds like they both have the tv and the sound effects coming through and not the continuous boom, boom, boom. Possibly the Walking Dead as it is on now and they like to watch, and I can hear muffle talk from tv sometimes. Once again will have to take sleeping pills to go to sleep.

**THE COURT:** And, just for the record this is an e-mail dated October 8th, 2014 at 8:15 p.m.

**MR. ELLIS:** Q. Page 97?

A.

[As Read] It's 2:07 a.m. and once again I have been awakened to bass music coming into my room. Music is not loud, but it is enough that it comes into a quiet room and has awakened me from my sleep. When the house is quiet with no noise the continuous boom, boom, boom is enough to create a noise to awaken someone. Once again, I suspect that they do not have daughter and just because they can't sleep does not mean that they need to interfere with other's right to sleep. Will need to take another sleeping pill to get back to sleep and if stay asleep and hopefully function properly in the morning for work.

**THE COURT:** And that e-mail is dated October 9th at 2:14 a.m., so that's a few hours after the previous e-mail.

**THE WITNESS:** Yes, I did another e-mail when I was awakened.

5 **MR. ELLIS:** Q. Page 98. Can you say the date and time of the e-mail?

A. It is October 15<sup>th</sup> at 3:00 p.m. from Nicole Papkee(ph), from By-Law.

10 [As Read] Advised me By-Law officers will only attend if there is a police officer available to attend with them. Police officers are not available, and By-Law will be unable to attend any complaints that we have.

**THE COURT:** Did she explain why that was?

15 **THE WITNESS:** I was never given a real definition for why that was. They just - I know that By-Law was wanting to remove themselves from it and make it a police matter but the police brought themselves and said that this was still a By-Law issue because when you call police dispatch if there is not a By-Law officer they will refuse attendance. So, I guess they made it where they both have to attend but I wasn't given a very - as you can see that's all I was given for a real reason.

20 **MR. ELLIS:** Q. If we can go to page 107. Can you read the date and time?

25 A.

[As Read] October 20<sup>th</sup> at 3:50 a.m. Oh my God these people really know how to - do not know how to turn it off. Once again music playing, and I have been awakened. Not loud enough - not loud

but enough for bass to carry through a quiet room.

Q. One oh eight?

A. October 21st at 2:27 a.m.

[As Read] My right ear plug fell out and I was awakened by boom, boom, boom. Not loud as during the day but still enough to carry to my room and wake me. Had to take two sleeping pills at 10:00 p.m. Now need to take another one to go back to sleep.

Q. One thirteen, the bottom e-mail?

A. October 28<sup>th</sup> at 8:48 p.m.

[As Read] Once again bass noise started at 8:23 p.m. not as excessive but enough that it can competes with the tv and also carries into my room. Once again will need to take one to two sleeping pills to go to sleep as cannot sleep with this beating into my room. Now this will play until late at night. Even after attending court today it still does not register that this is an issue and they continue with the music. This continues for another thirty minutes, how am I supposed to go to sleep. They really have no respect for people's rights. I don't even have a right to peace to sleep and the landlord does not care because he was in court with his tenants.

Q. And then the middle email?

A. October 28<sup>th</sup> at 8:57.

[As Read] Just in my room to go to sleep, will need to put ear plugs in and taking sleeping pills. How is this healthy and right?

Q. And the top one?

A.

[As Read] At 9:06 p.m. they turn it down to a more reasonable level. Let's hope it stays this level for the rest of the night and not an up and down night.

Q. The next one is a one of two, so the e-mail string starts on page 115.

A. October 29<sup>th</sup> at 5:53 p.m.

[As Read] Once again having to listen to boom, boom, boom. It's been playing since 3:45 p.m. Not in excess but it competes with the tv and is loud in my room. Can't even go to my room to relax. If this continues will be calling it in. It is annoying and irritating and have been listening since 4:10 to this - 4:10 p.m. I would like to be able to relax. How is it - how is it they have a right to enjoyment at our cost. I want the right to go to sleep without two sleeping pills and ear plugs. Last night although they turned it down, they still had to take - I still had to take natural sleeping pills to go to sleep and still low boom, boom, boom in my bedroom. So tired of listening to boom, boom, boom.

Q. The next e-mail, the title bar is at the bottom of 114?

A. October 29th at 6:16 p.m.

[As Read] Once again went to call regarding the bass noise coming through the walls. Police advised no one on duty and left voice message on

your line. Guess - which is a message to By-Law. Guess we're going to have to put up with this all night. Heard basement, main floor and my room. I don't always go into my parents' room.

Q. The next e-mail?

A. October 29<sup>th</sup> at 7:01 p.m.

[As Read] Bass turned down a little but not as - anywhere as low as last night. How much boom, boom, boom can a person listen to. Hopefully they will turn it down for bedtime. So sick of depending on sleeping pills to sleep when music is playing.

Q. The one above it?

A.

[As Read] 8:05 p.m. bass noise turned up a little. It is louder and harder. Why can't they turn down the bass volume? Hopefully someone will come soon to advise and to turn down the volume. Would like to be able to go to sleep without two sleeping pills and ear plugs. Would be nice any night but especially on a work night. Hopefully someone will come on duty.

Q. The one above it?

A. That's at 9:04 p.m.

[As Read] Bass noise turned down although not as low as yesterday, much better than it's been all day. They know how to turn it down but refuse to play it at a reasonable level during the day. Hopefully it will stay like this although will still need to take some natural sleeping pills to help fall asleep as bass carries into my room.



Q. And the top email? 2:40:27 bookmark

A.

[As Read] 9:17, the music was turned down further. Bass is subtle. Melatonin should work to relax to sleep. What a long evening with bass noise.

Q. Page 116. Bottom e-mail first?

A.

[As Read] November 2<sup>nd</sup>, 10:24 a.m. I am writing a complaint [this is going to By-Law.] I am writing a complaint letter regarding officer Rick who just left after 10:06 a.m. regarding a noise complaint. I saw that he was here and that he went to the house. I'm not sure if he spoke to Andrew or not as did not see. When he left the house, the music was still the same. I opened a door to advise that the noise was still the same; as usual bass noise. He said he could not hear it from the outside door. I advised him that it could be heard in my house and asked if he wanted to come in and listen and he said, no that he could not hear it from outside. It is being heard on our main floor, the upper staircase and my room. We have a right to proper investigation. All factors should be considered. It is not just about it being heard from the outside. If you have a system that carries bass noise into our home it is disruptive to our peace, enjoyment and sleep. Yes, people have rights to enjoyment but not when the enjoyment interferes with the right with others' enjoyment.

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How is these people have right to enjoyment, and we do not? Who can enjoy boom, boom, boom like a car outside your home with bass going on in their home for hours day after day? Guess we're going to have to listen to this all day and if it carries into the night I guess this is going to be back to sleeping pills tonight but will call again at night as I do not - as I do have a right to my sleep.

Q. The e-mail above it?

A.

[As Read] This is 11:05 a.m. on November 2<sup>nd</sup>. Update. It was just down in the basement - it can be heard down there. Although it's not excessive but it is a hard bass that is irritating and nuisance to listen to. No one enjoys listening to boom, boom, boom in their home for any length of time especially for long hours. I would like to know if Rick did speak with Andrew or whether he just went to the door and did not hear anything and did not knock on the door and speak with him. I would like Rick's last name for my records as this case is also a court matter.

Q. The next one is a one of three. So, if we can go to three of three at the bottom of 118, November 2nd 6:19 p.m.?

A. Sorry, what time?

Q. 6:19 p.m. Did I say 118 or...

A. 6:19, oh here we are.

[As Read] Once again, the music has started at 6:01 p.m. Yes, it looks like the bass has been

turned down a little, not as hard as it's been but still heard on the main floor and carries into my room. To continue late again, guess it's going to be back to sleeping pills tonight. If it gets any louder than what it is, will definitely be calling. No use calling as per Rick this morning - no use calling as per Rick this morning if you can't hear it outside their door you do not consider it a problem no matter how it is heard in our home. Hopefully something will get done in court as this is not right. The issue is inside our home. How the system is carrying into our home and not outside his door. My parents have lived here for almost over forty years and have never been so disrupted as they have with these people. We are so tired of hearing bass noise in our home. This is not even music.

Q. If you can go up to the next e-mail on 118?

A.

[As Read] At 6:44 p.m. music is turned down a little. Looks like it's going to be an up and down night. 6:45 p.m. Just to let you know that turning down a little does not mean we cannot hear it. Still getting bass just not as loud and hard but still - as it can be heard on the main floor and my room. The bass has gotten harder and louder, definitely an up and down night. 7:06, Oh my God the bass turned down; it is perfect. So low, is very subtle. Only occasional bass coming through. They know how to

play it at a reasonable level when it meets their needs. They just refuse to on a regular basis. Best it has been in a long time when they turn it down.

Q. And then page 117?

A. I'm missing page one.

Q. Pardon me?

A. I'm missing page one.

**THE COURT:** I am as well.

**MR. ELLIS:** Oh, okay.

**THE COURT:** It is the e-mail from Nicole Papkee(ph).

**MR. ELLIS:** It is.

A. Okay, that's where it says,

[As read] Please be advised we are no longer have By-Law officer attending to the noise complaints. We have been to your residence in over 30 occasions in the past year and have not found there to be any violations of our noise By-Law.

Q. Is this the first time you got in writing that they were no longer gonna come?

A. Yes, from Nicole, yes. I was advised verbally by one of the By-Law officers prior to that.

Q. If we can go to page 122, the e-mail at the bottom?

A.

[As Read] Hello once again, I know you said you will not be attending but 7:22 p.m. he turned up the bass. He had been nice and subtle until that time, but I am reporting it. Not extreme but

beating into our main floor and room. Hopefully it will not last long.

Q. And, what time was that?

A. It says 7:38 p.m.

Q. And then the e-mail right above?

A. 7:47 they turned it down again. Subtle, barely notice it, occasional thump.

Q. Page 123?

A.

[As Read] November 9th at 12:45, sorry 11:55 a.m. Once again, we are having to listen to bass in our home. It's heard mainly on the main floor and my room and subtle in the upper staircase. It started at 11:25 a.m. when I was doing yoga that ruined my yoga workout. Depending on the song some bass is louder and harder than others but always heard in our home so far in the area mentioned. It is also played from 6:54 to 10:05 p.m. yesterday. The bass was harder and louder as it was also heard low in the basement below the living room. Will update when the music bass stops. 12:45 p.m. the music stopped at 10:38 p.m.

Q. Ten thirty-eight?

A. Sorry, 12:38 p.m.

Q. Page 124, e-mail at the bottom?

A.

[As Read] 6:00 p.m. on November 10th. Hello, once again we are having to listen to hard bass in our home. It started at 5:40 p.m. nice and subtle and then turned up around 5:50 p.m. It is

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heard on the main floor, in my bedroom, upper staircase and low in the basement. Will advise when it stops or if it continues too long and we get frustrated, I will be placing a call. At 7:24 p.m. on November 10th. Just to let you know that at 7:07 the bass music was turned down to a reasonable level. It's now subtle and acceptable. Tonight, gave me a chance to record additional material to use for court.

**THE COURT:** Mr. Ellis will you be tendering the recordings?

**MR. ELLIS:** No, I won't. The recordings are too hard to hear without special equipment.

**THE COURT:** Did you check with the court as to what was available?

**MR. ELLIS:** They said that all that was available was something that I brought for a speaker because the system - they said that I could plug my laptop in but from my laptop you really can't feel the....

**CLERK OF THE COURT:** Connect to the actual - the speaker system in the courtroom.

**MR. ELLIS:** Yes, but you can't really tell the bass stuff. I've tried to listen to it. I've tried - I've been in the home but the sound that was recorded doesn't emulate what the sound is in the home, so I didn't feel that it was adequate to play it.

**THE COURT:** All right, continue.

**MR. ELLIS:** Q. Page 126, at the bottom November 14th

6:47?

A.

[As Read] Once again music started at 6:31 p.m.

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and we are listening to bass, boom, boom, boom in our home. Started off subtle for a minute then bass turned up. Heard on the main floor, upper staircase, my room, the basement. Bass low but hard. To rest in room, need to put ear plugs to minimize bass but still feel chest beat.

Do you want me to continue on page 127?

Weekends are always the worse with these people. Will let you know when it stops or if it gets worse or - is just starting. That was 6:31 p.m., sent at 6:47.

Q. And, the next e-mail above it?

A.

[As Read] At 7:05 bass noise turned down to a reasonable level. Bass subtle and heard lightly here and there. They know how to play at a reasonable level that does not disrupt and stays in our home. Will advise if it goes up and then at 9:54 for some reason the bass is harder tonight although low. Bass carries into my room once again. To go to sleep I need to put ear plugs and take sleeping pills tonight. Will be so nice when they turn off - turn it off or settle before nine, nine p.m. 8:53 a.m. on November 15th, Mom advised she went to bed 11:00 p.m. that the music was still playing. They had turned it down at 6:53 and then went back up at 7:35 p.m. hard bass. Now you think the level is acceptable. If this continues tonight, I will put a call in. I should not need to put ear plugs and take sleeping - take sleeping pills

plus melatonin to sleep and that still took me more than thirty minutes to fall asleep and I was exhausted which is why I went to bed but the ear plugs do not keep all the noise out so I need the sleeping pills to knock me out but I said no me out.

Q. Page 130 at the bottom?

A. What time?

Q. 5:22 p.m.

A.

[As Read] Hello, once again at 5:15 p.m. the bass noise has started. Today is loud and has been for the last few days. The amount we have to listen to is noise abuse. I am five minutes away from putting a call in today if this continues. This is not right. My dad has been sick. Was in the hospital yesterday and we can't even get any peace. It's heard on the main floor, upper staircase, my room and subtle in the basement. At 8:47 p.m. Hello. At 8:41 p.m. called police for By-Law and advised no one on duty. Have been listening to boom, boom, boom since 5:15 p.m. This weekend has gotten worse. This is noise abuse. So tired of it. We don't even have a right to sleep. Will this nightmare ever end?

Q. The next one above it at 9:07 p.m.?

A.

[As Read] Music finally turned down. Now at a more reasonable level and hopefully will stay this way. They know how to play at a reasonable level. At 9:38, not as low or subtle as usual.



Sounds like it may be tv with surround sound as not consistent boom, boom, boom and quiet breaks in between. Another night of ear plugs with sleeping pills.

Q. Page 132?

A.

[As Read] 6:43 p.m. oh - I'll start at the bottom at 6:30 p.m. Once again, we are having to listen to boom, boom, boom. I get home and hear it walking in the door. Mom said it started at 6:00 p.m. and she went downstairs to get away from it as it is subtle down there. It is heard on the main floor, upper staircase, my room and subtle in the basement. We are so tired of this. There is no break. Once again got court [...] I can't believe this nightmare is still going on. Will it ever stop.

6:49 p.m. - 6:43 p.m. music turned down. It is very subtle. They know how to play low when they want to. Don't know why I have to keep listening to it when they know how to play low when they want to. Hopefully since school night and daughter home it will remain quiet for the rest of the night.

Q. The next one is a one of three. The first e-mail starts on 134 three quarters of the way down the page, 7:06 p.m.?

A.

[As Read] November 19th 7:06 p.m. Well once again we listen to bass noise in our home. Not as loud and extreme as previously but still heard on the main floor and my room. Bass started at

5  
10  
15  
20  
25  
30

6:54 p.m. Also, I was not home at the time, but my mom said the bass noise played yesterday from 6:00 to 6:30 and that it could be heard on the main floor and my room. She did not go to the basement to listen as she was in the kitchen but went to check my room. She said it was fairly loud and hard. My poor parents can't even get peace in their home and my dad is still sick and taking it easy. So tired of this nightmare. So tired of hearing their bass in our home when they know how to play at a lower level. Will let you know when the bass stops. 9:22 p.m. Bass noise is still playing into our home. It is heard on the main floor, upper staircase and my room. It is a work night and I'm not able to go to sleep as the bass is too hard in my room. If this keeps up, I'm going to have to put ear plugs and take a couple sleeping pills to go to sleep. Got some recordings to use present in court of what we're listening to and putting up with for hours out of the day. I'm almost ready to call because this is not right.

At 9:27, Sorry had enough and want to go to sleep. Call for By-Law and no one is on duty.

At 9:32 p.m. Just came from the basement as no one has been down there and is still heard low in the basement. So, heard main floor, upper staircase, my room and low in the basement. We really have no peace in our home even when time to go to sleep. Going to bed, taking two

sleeping pills to sleep and going to use ear  
plugs tonight.

Q. Page 133?

A. 133?

Q. At the bottom.

A.

[As Read] Can't go to sleep with this. Can't  
believe we do not have anyone on duty and that  
was at 10:25 p.m.

11:08, called police for a neighbour dispute and  
cancelled forty-five minutes later as way too  
long and getting sleepy from sleeping pills but  
taking third pill to knock me out 'cause even  
with ear plugs cannot sleep as this does not  
block it out. Mom waiting for bass to stop as  
she's tired and ready for bed. Hopefully not a  
long wait. Dad's still sick and can't even get  
proper rest and quiet. This is not right. We  
don't have rights to sleep and wellbeing. This  
is such a nightmare. Not even sure how loud to  
play - how allowed to play late when people  
trying to sleep.

Q. The top e-mail?

A.

[As Read] This was on November 20th at 7:14 a.m.  
Update, mom advised that bass noise played until  
after midnight as she waited with my dad for it  
to stop to go to bed. She said it continued and  
had to go to bed but still playing and could be  
heard in her room. Dad stayed up for longer. My  
poor parents and my dad has been sick and no

right to wellbeing in his home. The stress from noise abuse and lack of help. Had to call the police and they put a call, but it was cancelled due to the weather. Who knew when they were going to come, and the first two sleeping pills are starting to make me drowsy. Took three sleeping pills plus two melatonin to really knock me out 'cause even with the ear plugs can still hear the bass and my chest beats to the bass so bass noise playing into our home after 12:00 p.m. [that should have been 12:00 a.m., sorry]. And this morning I feel tired and groggy from not getting enough sleep as I did not go to bed until after 11:00 p.m. and with three sleeping pills in my system something is not right with this picture.

Q. Page 138, e-mail at the bottom; 7:34 p.m.?

A.

[As Read] November 21st 7:34 p.m. Hello, once again the bass noise started at 7:28 p.m. We just don't get any peace in our evenings and being a Friday night, this will probably go to all hours of the night again. Bass heard on the main floor, upper staircase, hallway to bedrooms, my room, lower in basement and low in parents' room. This is noise abuse and not right. Can't believe we do not have a right to sleep. If this continues late, I will be calling for By-Law if there is anyone on duty tonight as the past few nights there has been no one on duty. My poor

parents and my dad still not feeling well. We have no rights. No rights to sleep or wellbeing. At 7:52 p.m. Call for By-Law on noise complaint and advised no one on duty again tonight. 8:41 p.m., 8:16 p.m. music turned down to subtle. Waited as wanted to make sure it was turned down and not just a pause. Hopefully it will stay this way tonight.

Q. The next one is a four-page e-mail starting at 139 and going to 142. The first e-mail starts on 141, three quarters of the way down the page, November 22nd 3:47 p.m.?

A.

[As Read] November 22<sup>nd</sup>, 3:47 p.m. Once again, we are dealing with bass noise in our home. Not as loud as usual but is enough that it is heard on the main floor, upper staircase, my room and lower in the basement and parents' room. Started at 1:29 p.m. Also, today we had to take my dad to the hospital as he is dealing with dizziness and not feeling well.

**MR. BATTISTON:** Sorry, I'm not matched up with the page, 139 you said?

**MR. ELLIS:** No, no 141. It starts at 139 but 141 is the beginning because it goes backwards through the e-mails, sorry.

**THE WITNESS:**

[As Read] Also, today we had to take my dad to the hospital as he's dealing with dizziness and not feeling well. They said he needed rest and sleep and we explained the situation in our home. The hospital assigned a geriatric nurse, Lucy, to

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us that is investigating the possibility of the noise and elder abuse. As I explained all we hear is the bass boom, boom, boom. She also followed-up with the police as concerned with the effects this is having on the health and also referred us was made for specialized geriatric mental health assessment to evaluate the situation. She also called the police and spoke with a Constable Fiazi(ph) who is looking into the situation. This is elder and noise abuse. I will be calling for By-Law and police to come as I do not want to hear this with my dad's condition. Sorry but health and wellbeing comes before enjoyment. Know that this is going to court, but my dad's health is being too affected to have nothing done. I cannot wait for something to happen to my dad or him to die from this situation or see something happen to my mom next from the constant boom, boom, boom. Our paralegal came over, could not believe what he had to put - with what we have had to put up with. At 3:39 p.m. it changed to tv with surround sound. It is rumbling into our home. At 4:42 p.m. tv turned down. Now subtle and reasonable. 5:18 p.m., 5:12 p.m. back up - back up, sorry - back to music. Right now, low and subtle. If it goes up will definitely be calling for By-Law as not putting up with this at bedtime especially with dad's condition. Not playing around with my dad's health.

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At 7:41 p.m., 7:08 p.m. the bass has been turned up. Although the bass is hard and annoying can't believe my parents don't have a right to peace and wellbeing. My dad rest in peace. Was in my room, the bass is fairly hard there. As this continues all night will have to use my ear plugs and sleeping pills. We have been listening to bass noise tv surround in our home since 1:29 p.m. straight. This is noise abuse and being on a Saturday will probably go on all night. I would love to call By-Law but the level of what they are doing, they will do nothing. Would love By-Law to come and ask him to turn it down - come and turn down the bass. It was low and subtle earlier, but they just don't like to leave it at that level.

November 22nd, oh my God 7:58 p.m. and the music turned down to subtle. Hopefully it will stay this way. Been a long day of bass noise especially after spending the morning in the hospital 'cause of my dad. No need for By-Law officer they know how to play at a reasonable level when they want to.

10:17 p.m. Oh my God exhausted, went to bed at 9:00 p.m. Awakened to tv, this is at 10:17 p.m. Awakened to tv surround sound coming through, rumbling through walls, just can't get a break. At 10:19 p.m. changed to music, back to boom, boom, boom.

At 10:42 p.m. on November 22nd, playing with tv volume, come and go, cancelled call as turned

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down. Turned down but it was heard on the main floor, upper staircase, bedroom and basement as parents down there and advised they heard it. I just can't get a break either. Was resting downstairs and was getting ready to take sleeping pill to put to sleep but didn't as the tv rumblings, he was waiting to see if goes back up. I'm also going to need sleeping pills again tonight after sleep disrupted and in case it starts again. 11:06 p.m. Bass up and down. Right now, bass low but hard bass. Bass at the level that is disruptive, but By-Law will do nothing about. Parents getting ready for bed. Dad's so tired and sick but afraid of going to bed and being awakened from bass noise. We all put ear plugs to sleep. Dad and I take sleeping pills to sleep but mom not as she is worried about my dad. How is it we have lost our right to peace, rest and sleep in our home even at this time. There was no need for us to hear boom, boom, boom at any level at any time in our home but especially at this time of the night. We are so tired of this nightmare.

At 3:00 a.m. on November 23rd, oh my God ear plug fell out and once again awakened to low hard bass playing and my chest still beating to bass noise. Just can't get a break with these people. Weekends are a nightmare. It goes on forever, the music. Ear plugs back in and trying to fall asleep again. Miss my right to sleep and rest, so tired.



Q. 154, it's an e-mail of one, two, three. So, the first e-mail actually starts on 156?

A.

[As Read] At 1:07 a.m. on November 30th. Oh my God, it had to be - it had been so nice and quiet all week and I've just been awakened to bass noise. Low but hard bass coming into my room. Heard in living room and my bedroom. It had been - it was being such a quiet, nice quiet week. On November 30th at 1:27 a.m. went downstairs and heard in the living room, kitchen and in staircase. Even at these hours they still play heavy bass. I called the police and advised no By-Law on duty tonight. Don't even have a right to sleep. Once again going to take a sleeping pill and ear plugs to sleep. Just had stronger sleeping pills from - just got stronger sleeping pills from doctor as taking too many of the others. Can't believe this is right even at these hours.

At 1:33 a.m. got stronger sleeping pills from doctor. Laying back in bed and my chest beating to bass. It had been so quiet it was nice. 1:59 a.m. waiting for sleeping pill to kick in as I cannot fall asleep to this. Ear plugs do not fully block noise and chest beats to bass. Sounds like loud, heavy thump, thump, thump. At 6:36 a.m. Once again awakened to bass noise still playing. Ear plugs had fallen out. Damn thing never stays in. They play all night,

disrupt people's sleep and then will sleep during the day. This is noise abuse and disruptive.

Bass volume at 6:48 a.m., bass volume the same volume as 1:30 a.m. volume. 6:51 a.m., bass still playing. Putting ear plugs back in to see if can fall asleep as tired from disruptive sleep. 7:23 a.m., bass noise turned down. Even with ear plugs can still hear it and heart not beating as hard to bass. Took out ear plugs to check and now subtle. Why can't they keep it like this during the day and turn it off during the night. How do we lose our right to peaceful sleep? Hopefully turned off soon.

7:47 a.m., bass noise turned off, finally quiet.

Q. Page 164-165, it's a one of two. First e-mail starts at the very bottom of 164, December 2nd, 7:44 p.m.?

A.

[As Read] December 2nd, 7:44 p.m., they've been playing music since 6:15 p.m. at a subtle level with bass - subtle bass. Light thump, thump, thump. It has been a reasonable level especially considering what we have been listening to. Why can't they continue to play at this level? They know how to play at a reasonable level when they want to.

7:38 p.m., they have to turn it up. Low hard bass coming through. Heard loudest living room, in my room, lower in kitchen and upper staircase. This is continuous noise abuse. Will see how long this continues.

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At 9:34 p.m., 9:28 bass noise finally turned down, subtle thump, thump, thump and can feel my chest beating to the bass. Hopefully it will be this way for the rest of the night. Now can finally get some sleep to go to bed. Got some recordings of trying to watch tv with bass noise in the background.

At 10:12 p.m., trying to fall asleep. Bass noise not as hard or loud as earlier but not as subtle in bedroom as living room. Will need to put my ear plugs and take melatonin to fall asleep and sleep through the night. Thump, thump, thump irritating and a nuisance.

1:24 a.m. December 3rd, awoke to go to the washroom, took ear plugs out as noticed 1:20 thinking it would be quiet. Bass noise still playing low as went to bed. Need to put ear plugs back in to be able to go back to sleep. This is ridiculous.

**THE COURT:** Are you going to continue on with these e-mails for a period of time, Mr. Ellis?

**MR. ELLIS:** Yes.

**THE COURT:** I think then we probably need to take an afternoon break.

**MR. ELLIS:** Okay.

**THE COURT:** So, we're going to break for ten minutes and we'll return at twenty-five after three.

**CLERK OF THE COURT:** Order, all rise. This court is stood down.

**R E C E S S**

**(03:14:05)**

**U P O N R E S U M I N G :****(03:28:26)**

**CLERK OF THE COURT:** Order, all rise. Court is now resumed. Be seated please.

**THE COURT:** All right, before we begin Mr. Ellis, I think it's obvious to all that we're not going to get through the rest of this and we are going to be stopping at 4:30 of course and I understand you've let two of your witnesses, two of the plaintiffs go.

**MR. ELLIS:** Yes.

**THE COURT:** I would like to re-schedule now so that this matter doesn't drag on and drag on. There's nothing worse for the parties and for myself to have things drag on for months on end. I already have a full day of trial on February 13th. I am available on February 27<sup>th</sup> if everybody has that date.

**MR. ELLIS:** Just one moment please.

**THE COURT:** Sure, if everybody would check their calendars please.

**MR. BATTISTON:** Also, I've spoken briefly with Mr. Dooling and Ms. Ferguson. I've impressed upon them that they really should consult with a legal representative and I think having explained a few things to them, I think they really will follow that up so I probably would like a little more lead time only from the perspective if someone gets involved. It wouldn't be difficult to catch-up on today's evidence because it's all basically documents but I'd like to just advise the Court that I've done that, and the rest is up to them, but February 27th is probably okay.

**THE COURT:** Or the other date is March 22nd. I don't have my second quarter schedule yet but those are the two dates I have available and I thank you for speaking to Mr. Dooling and Ms. Ferguson. What I was going to remind you of is this, and perhaps this hasn't crossed your mind.

The parties have all filed a legal document. The plaintiffs have filed a claim, the defendants have filed defences. All those are are allegations. It gives the Court an idea of what everybody's story is but it's not proof of anything. It means nothing until there's evidence on those points so where you say allege certain facts and this applies to anybody - where you've alleged certain facts in your defence or your claim, it's meaningless until you've actually proven it in the courtroom, okay. I've read everybody's pleadings; I've read the plaintiffs' claim and I've read both defences, but I can't make a decision based on those documents so that's why it's so very important to provide evidence.

So, those are the dates I've got available at this point. So, if the parties are happy with any of those dates, let me know now so that I can at least advise the court staff to put it on that date ASAP, All right?

**MR. ELLIS:** I'm good for the 27th of February.

**MR. BATTISTON:** Twenty-seventh works, okay.

**THE COURT:** Is February 27 work for everybody? All right so when I endorse the record, I'll adjourn it to February 27 date and I'm going to anticipate this could take a full day. Would that be fair to say?

**MR. ELLIS:** Yes.

**MR. BATTISTON:** Yes.

**THE COURT:** All right. I will let the court staff know that as well. Okay, so now we can continue on with the plaintiffs' evidence and we left off at December 3rd.

**MR. ELLIS:** We've done that one though right?

**THE COURT:** Yes, that's where we finished was December 3rd.

**MR. ELLIS:** Q. If we can go to page 168. The bottom e-mail 10:04 p.m.

A.

[As Read] December 5th at 10:04 p.m. It's a noise nuisance to By-Law. Update of the evening, 5:47 p.m. bass noise started. Low and subtle. Heard subtle music in my room. 6:54 p.m. bass noise turned up a little. Low and hard. Heard in the living room, my room, subtle in the kitchen, low and hard continuously - heard continuously but better than all week.

Irritating and nuisance as watching tv and continuous thump, thump, thump in the background. 10:02 p.m. getting ready for bed bass noise still playing, low and hard but still better than been all week. Continuous thump, thump, thump. If it stays this way will only need ear plugs to go to sleep but no sleeping pills. Wish they would especially turn off the bass at night when trying to sleep.

As Friday night this will probably go on all night like previous weekends. They know how to

play low when they want to. So tired of it.

Hours of thump, thump, thump and boom, boom in our home. This is noise abuse.

At 10:14 p.m. holding out on the sleeping pills but needing to take a couple melatonin as chest beating to bass and need something to relax me.

Q. If we can go to page 169.

A.

[As Read] December 6th at 2:44 p.m., 12:18 p.m. unpacking groceries in kitchen and notice bass noise. Went to living room to listen and low and hard bass noise playing. Heard in the living room, my room, lower in kitchen and upper staircase continuously low, heavy boom, boom, boom. Noise level same as level playing yesterday. Still better than what played during the week and what we normally hear during the weekend especially when [don't know].

1:20 p.m. having family lunch and low heavy boom, boom, boom playing in background. Kitchen tv on to mute out thumps a little. 2:01 p.m. watching tv in living room and bass noise still playing.

Heavy boom, boom, boom, in background while trying to enjoy a movie. So tired of the continuous boom, boom, boom and/or thump, thump, thumps in our home. Luckily my parents cannot hear it downstairs. They are getting ready for a nap. Tired trying to take a nap in my room. We need to use - will need to use ear plugs to soften the bass noise.

Q. If we can go to page 184-185. The first e-mail starts at 185 at the top.

A.

[As Read] Saturday, December 16th - sorry December 6th at 9:45 p.m. Once again, the bass noise has been turned up. Not as loud as previous but also not subtle. This is noise abuse.

10:14 p.m. going to bed although lower hard bass coming through not as low as when the police officer was in the house. They turned it up again. Heard in living room, in my room and subtle in kitchen. A night for sleeping pills and ear plugs again tonight.

10:32 p.m. Will call the police and they get nasty. He turned up the bass loud for one song that was heard on the main floor, upper staircase, hallway, the bedrooms, my bedroom. My parents said it was loud in the basement. What they don't know is we're recording them, and I got a recording of the bass playing. They did turn it down low and hard. Heard in living room, my room, kitchen, staircase, got help us, my poor parents.

11:21 p.m. After 11:00 p.m. bass still playing at the same level. Disruptive and a nuisance and interfering with a person's sleep. Even with ear plugs we'll still hear bass. Waiting for the sleeping pill to kick in while lying in bed with my chest beating to the bass and listening to the bass noise.



Q. Page 187, the bottom e-mail?

A.

[As Read] December 8th at 9:15 p.m. 9:43 in kitchen putting on shoes and hear subtle bass playing. Come into living room and low hard bass playing. Heard in living room and my room and subtle in kitchen. 7:30 p.m. Return home from reflexology appointment, bass noise still playing although slightly lower and bass does not seem as hard. Sounds like continuous hard thumps. I feel it beating in the chest as sitting on the couch. Heard in living room and my room. Bass seems harder again at 8:16 p.m. Heard in the living room, my room, loud and hard thumps. 9:02 p.m. Going to bed, bass noise still playing. Heavy thumps in my room. 9:10 p.m. lying in bed, trying to sleep and realize need ear plugs to go to sleep and taking melatonin to help sleep. Feel chest beating to bass noise. 9:14 going back to bed to try and sleep.

Do you want me to read 11:31 p.m.?

[As read] 11:31 p.m. on December 8th. Once again awakened due to bass noise still playing. Even with my ear plugs on as ear plugs have little effect and my chest beating to bass. Need to take one of my dad's sleeping pills to sleep. Hopefully the sleeping pills will help. Even during the week, this playing all night into the late hours.

Q. Next group of e-mails are at 188, 189. The first e-mail starts at the bottom of 189, 4:18 a.m.?

A.

[As Read] 4:18 a.m. on December 9th, oh my God 4:13 a.m. awoke to go to the washroom. Bass noise still playing. Don't tell me they playing all night. Just can't seem to get a break from the bass noise.

5:43 a.m. 5:34 a.m. base noise finally turned off. Been lying in bed listening to bass noise, unable to go back to sleep because of it.

7:15 p.m. on December 9th. After bass noise turned off at 5:34 I managed to fall asleep until my alarm went off at 6:20 a.m. So tired and miss being able to sleep in peace.

5:42 p.m. in my room getting changed after work and hear low bass noise through wall. Bass noise heard in my room and living room, subtle in kitchen. 6:05 p.m. in basement with my parents and hear subtle bass coming through ceiling. So tired of hearing bass in our home. This is constant noise abuse. Bass noise heard in my room, living room, subtle in kitchen and

basement. My poor parents, at least they are in the basement where it's subtle and don't have to listen to the living room at the level it is. I have such a headache and anxiety today since this morning and I just can't seem to get rid of it.

7:40 p.m.; 7:32 bass noise turned up a little. Bass harder and louder. Hard in living room, my room, upper staircase and low in kitchen and

basement. Why is it they cannot keep the bass low. So tired of bass and my chest beating to the vibration. I hate the feeling of my chest beating all the time to the boom, boom, boom. Hopefully they will turn it down soon and if not - and it will not play all night again. I guess now with the babies keeping them up during the night, late nights are going to get worse. 9:42 p.m. Once again, the bass noise has been turned up. Bass is harder. Even with ear plugs can still hear it and chest beats hard. Can't understand why they can't keep it down. They know how to turn it down when necessary. This bass noise has nothing to do with shared walls. This is about the way people play their music and the equipment. If this was in an apartment or condo this would have been dealt with. This is a daily disturbance. This is noise abuse.

Q. Page 191, bottom e-mail 5:58 p.m.

A. December 10th at five....

**THE COURT:** If you can just wait until I get there. All right.

**THE WITNESS:**

[As Read] December 10th at 5:58 p.m. 11:00 a.m. to 1:30 p.m. mom advised bass noise heard low. Heard in the living room. She did not go to my room to check if heard there. 5:34 p.m. bass noise heard, started again low and hard bass. Mom confirmed louder than what was during lunchtime. Heard in the living room and in my room. Heard slightly lower in the kitchen, upper

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staircase and basement. So tired of the noise abuse, daily disturbance and nuisance.

At 10:23, 9:40 p.m. Arriving home from appointment and hear hard bass noise walking inside kitchen door. Bass actually seems slightly harder and louder. Heard in the living room, my room, upper staircase but lower but still heard in kitchen and basement. Poor parents had to spend the evening listening to this. Getting ready for bed and once again need to put ear plugs and take sleeping pills to sleep. There is just no peace in this home in the evening with boom, boom, boom evening after evening.

**MR. ELLIS:** Q. The next set starts on page 194 to 197. First e-mail of that set is on 197.

A.

[As Read] December 12th at 3:41 a.m. Awoke to go to the washroom, bass noise still playing. Lying here listening to bass boom, boom and my chest beating to bass. Can't take another sleeping pill as need to get up for work later. Once again, no peace even in the middle of the night to sleep. This noise just seems to be on constantly.

4:14 a.m. Oh my God bass noise finally turned off. No bass since 4:09 a.m. 6:48 a.m., 6:10 awoke to the alarm, lying in bed still and within a few minutes notice low bass playing and my chest beating to the bass. Listen for little to confirm from neighbours. Listened to this for

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hours during the day especially evening. Go to bed with playing, hear it during the night and wake up with it still playing. This is constant noise abuse. This annoying and irritating and excessive at any level for anyone to have to listen to hours of noise day after day.

At 7:33 a.m. getting ready to leave work and bass noise very subtle in living room - barely playing at this level during the evening.

6:37 p.m., 5:35 p.m. walk into the door and hear hard - low hard bass noise heard in the living room, my room, upper staircase, low in kitchen and subtle in basement. At times recordings recorded for evidence for the disturbance and nuisance we're experiencing to the excessive hours of constant boom, boom, boom.

**MR. BATTISTON:** Is that at 194, sorry?

**THE WITNESS:** Is was at 196.

**MR. ELLIS:** No, that was at 196.

A.

[As Read] 8:01 p.m., 7:53 had gone downstairs for twenty minutes to get away from the bass noise as more subtle down there. When came back up bass noise turned down. Bass very subtle, almost did not notice it. Bass perfect this way noise wise but still feel it beating in your chest as if sitting in living room. Why can't they keep it at this level during the evening. Hopefully it will stay this way in the evening. So tired of the bass noise abuse.

9:20 p.m., 9:03 p.m. although still lower this has been on all evening. Bass harder than has been since 7:53 p.m. Low but harder bass and more continuous through wall. Heard low living room and my room. Also feel it harder in the chest. Hope this does not continue to go up. My dad has not been feeling well this afternoon, evening and wish it would turn off. Tired of hearing bass, even subtle and feeling in our chests. Miss peace and quiet in our home especially when time for sleep.

9:36 p.m., 9:25 p.m. bass music just went high and loud. Once again there is no one on duty. They keep it low during the evening and then time for bed and they turn it up. It startled the crap out of us and our family. Did not manage to record it as an extreme but recorded it loud. I called for By-Law and advised that they have no one on duty; Friday night and no one on duty and Constable Neilson and Shaun were here yesterday saying they wanted mediation but yet come the weekend they turn it up and do what they want. This is a joke to them. Although we have recordings to prove it my poor dad is not feeling well today, and we have this crap starting at 9:25 when people want to go to sleep.

9:44 p.m. They turn it down slightly but bass heavier than been all evening. I was listening to the recording and have a good recording of what they turned it up to, but these people are being vindictive and playing games. We'll

continue to court. Constable Neilson you are more than welcome to come and listen to the recordings and so By-Law if you really want to hear what we are hearing. These people have no interest in mediation.

**MR. BATTISTON:** Sorry, where is she reading from now?

**MR. ELLIS:** Top of 195.

**THE COURT:** It starts at the bottom of 194, December 12th 9:44 p.m. Once again, please would you slow the pace down so that everybody can find the page before you start reading it out because by the time you've read it out I've just gotten to the page and I'm trying to make notes and I'm sure counsel is as well.

**THE WITNESS:**

[As Read] 9:44 p.m. They turned it down slightly but bass heavier than been all evening. I was listening to bass recording and they have a good recording what they turned it up to. These people have been vindictive and playing games. Will continue to record. Constable Neilson, you are more than welcome to come and listen to the new recordings and so is By-Law if they want to hear what we are hearing. These people have no interest in mediation. They are playing games. They startled the crap - they startled the crap out of us. My dad is not feeling well today and can't even get peace in our home for rest. Thank God for recording. I plan on using this in court especially during - after being told they were willing to consider mediation and then playing music at a level they do. Guess it's going to be

a night of sleeping pills and ear plugs at the level unless they turn it down.

10:55 p.m. Bass noise louder than it has been all evening. Heard in the living room, my room, upper staircase, kitchen and basement. Bass noise fluctuating up and down, but bass is constantly heavy.

10:43 p.m. Bass turned down a little but not at a level that has been this evening. These people have no interest in mediation. They probably felt they had to because of police and By-Law at the [...] suggestion they should. If they were serious, they would not be doing what they are doing tonight and playing at the volume they turned it up to. The whole thing is a game and a joke to them. Going to be a long night again. This is noise abuse. Poor parents agitated and upset about the whole thing especially after Shaun and Constable Neilson were here taking - talking mediation to resolve the matter. They feel violated and like no one is taking this matter seriously. We are also extremely upset about the whole matter tonight and of course no By-Law available tonight. Going to bed. Two strong sleeping pills and ear plugs.

11:27 p.m. Just going to bed. Noise is really loud in my bedroom tonight. Stopped for about five minutes and then started back up again. The bass is still fairly heavy now. My parents and I are not at all impressed with what happened tonight especially after talking mediation to try



and resolve this. They have no interest in resolving this matter. They are not even taking this serious.

**MR. ELLIS:** Q. Next set of e-mails at 201, 201. The first e-mail starts at the top of 202.

A.

[As Read] December 14th at 5:10 a.m. 4:43 a.m. awakened to low hard bass playing again. Listened to make sure - listened for a little to make sure, chest also beating to bass. I woke with a nasty headache yesterday that would not go away and still have it again this morning. So tired of bass noise. It's excessive and my chest beating to this crap. 6:51 a.m.

**THE COURT:** Please, please, please slow down. Proceed.

A.

[As Read] December 14th at 6:51 a.m. Oh my God, bass noise still playing. Listening to it at this time and unable to fall back asleep. I'm so tired I just can't get any proper sleep with this noise even if low.

2:08 p.m. 8:25 a.m. having breakfast and bass noise still playing. Heard in my room, living room, upper staircase, lower in kitchen. Even with kitchen fan working as lunch already cooking. 9:07 a.m. Bass noise music turned off. 9:57 a.m. Bass noise started again. Ten to 11:00 a.m. Doing mediation [sic] with CD headphones to hear bass fluctuate up and down. Not a very good meditation as the bass noise too

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disruptive. Hoping to relax but did not help.  
11:16 a.m. tv with surround sound on. Although  
lower rumblings from surround sound from special  
effects. 12:04 tv off. 1:51 p.m. bass noise  
started again. Started subtle and then went back  
up to low and hard. Finished lunch and heard in  
kitchen while doing dishes. Checked living room  
to confirm and yes bass heard in living room, my  
room, upper staircase, lower in kitchen. Did not  
check basement. So tired of hearing bass in our  
home day after day.

15  
20  
8:42 p.m. 6:53 p.m. Bass noise music turned off  
between 1:51 to 6:53 p.m. Bass noise fluctuated  
from low and soft to hard about every ten to  
fifteen minutes, not sure what that was about.  
Just grateful for the peaceful evening and if it  
stays this way being able to go to sleep without  
sleeping pills or ear plugs. Hopefully my  
headache will go away. Have had a headache for  
two days and real bad anxiety.

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Q. Pages 208,209. First e-mail on 209 at the top.

A.

[As Read] December 17th at 5:31 a.m. Once again  
awakened to low bass noise at 5:13 a.m. Left ear  
plug fell out. I'm so tired and groggy I miss my  
sleep.

10:26 p.m. on December 17th, 5:38 p.m. low bass  
heard in my room. Changing in room. Came down  
and also heard in living room. Low constant  
thumps annoying. Also feel the pressure in my  
chest. 6:45 p.m. Left for appointment and bass

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noise at same level. Andrew still not home when I left. 9:50 p.m. Arrive from appointment. Bass low but harder. Heard in living room, my room and kitchen. Constant hard thumps. Still feel the pressure in my chest. Bass always seemed harder when Andrew was home. Why can't they keep it at the 5:38 level? Parents had been in the basement to minimize and stay away from bass noise and nuisance. Once again going to be another night of sleeping pills and ear plugs. I'm so tired of being dependent on ear plugs and sleeping pills to be able to go to sleep and sleep through the night.

2:37 a.m. on December 18th, 2:25 a.m. awakened to low bass noise. Can't believe it is still playing. Can't believe nothing being done about the bass noise at this time. People should be able to have a right to sleep. Even on one sleeping pill plus melatonin I am still awoken. Left ear plug fell out but that doesn't matter as I should not have to be wearing them to block bass noise, especially at this time. Another sleeping pill to go back to sleep.

Q. 212 and 213. The first e-mail is on 213 halfway down the page.

A.

[As Read] December 19th at 2:49 p.m. 2:33 a.m. awakened to go to the washroom. Remove ear plug and bass noise playing low. Need to put them back in to go to sleep. Why does it need to play at this time? I also feel the bass in my chest.

Hate the feeling. Miss peace and quiet especially to sleep and rest. They can't remove the bass it should not be allowed between 11:00 p.m. to 7:00 a.m. We are all so tired of constantly hearing this noise. I'm not the only one and frustrated with the whole situation, back to ear plugs.

6:03 a.m. Awakened to bass noise playing at 5:45. So tired of this bass playing during the night and not being able to sleep properly and getting proper sleep and rest. So tired and just want to sleep. I miss my sleep.

6:12 p.m. 5:24 p.m. Walk in kitchen door and bass noise heard. Mom advised bass noise started at 3:15 p.m. Bass noise heard in living room, kitchen, my room, lower in basement. Parents in basement and have fan going to create white noise to minimize bass noise. Dad still not feeling well and just can't get a break. Evening after evening constant noise abuse. Mom says everyone talks about mediation but believes they are not serious as they continue to turn up the bass noise especially on weekends. I also feel they are not serious about mediation considering the way the bass noise continues.

9:32 p.m. Today was a long evening for bass. Loud and harder bass than it has been all week. Hard boom, boom, boom. These people are not serious about mediation or the situation. They have no interest in changing what they are doing, or this would still not be continuing. It's

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heard on the main floor, upper staircase, the basement, hallways, the bedroom, even in the bathroom heard the bass. Don't call By-Law as nothing will be done by By-Law and we may end up suffering more as they turn it up and make us pay. But continue with the e-mails to advise of the noise and hours we are having to listen to this constant noise abuse.

8:54 p.m. Bass noise turned down to low hard bass. Heavy thumps. They know how to turn it down when they want - when they need to. Still heard in living room, my room. So tired of bass noise in our home. Poor parents have had to put up with this since 3:15 p.m. Mom says she was doing the dishes from late lunch when the bass noise started and dad's still sitting at the kitchen table. Parents just can't get any peace. This is noise abuse. Another night of ear plugs and two sleeping pills to knock me out. Miss my sleep and peace to sleep.

9:42 p.m. Hate weekends. Bass always louder. Even tonight louder than all week. So tired as not slept properly due to noise disturbances. Want to be able to sleep especially without sleeping pills and ear plugs. Tired of having to be dependent on sleeping pills to go to sleep.

Q. Page 218.

A.

[As Read] December 23rd at 10:09 p.m., 7:23 p.m. low hard bass noise started. Heard in the living room, my room, upper staircase, lower in basement

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and kitchen. Kitchen fan going as dad making octopus and mom making rice pudding for tomorrow. Bass still heard and fan does not drown out bass noise in kitchen or living room.

9:28 p.m. Bass noise turned down. Low boom, boom, boom heard in living room and my room. Subtle in the kitchen.

9:43 p.m. Going to bed. Bass noise still playing. Ear plugs and sleeping pills again tonight. It was so nice yesterday without ear plugs and sleeping pills and sleeping through the night 'til morning. Miss being able to sleep peacefully in my sleep. Even just before preparation for Christmas we cannot get peace and enjoyment in our home due to the bass disturbance and nuisance. Having to prepare for Christmas without this disturbance and nuisance in our home. These people have no interest in resolving this which is why we will not proceed without my paralegal present and I'm not stopping the lawsuit on various parties. This has continued too long and has taken a toll on this household. Even for Christmas they don't consider the noise. Don't call By-Law because they don't do anything and when leave, it is worse and you still say, not bad and we end up suffering more.

Q. Page 219, 220 and 221 are another string of e-mails. The first e-mail starts part way down on 221.

A.

[As Read] December 24th at 3:04 a.m.

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2:55 a.m. awaken. Remove ear plugs seems no noise. So tired and groggy. Going back to - going back, no ear plugs. Hopefully stays quiet.

5:20 a.m. awaken to low base noise. Why is it playing at this time? So tired and groggy. Just can't get any proper sleep. No ear plugs 'cause had to take them out earlier as quiet and they were bothering my ears. So tired of this bass noise nightmare. Going to bed with it playing, awakened to it. This is disruptive and a nuisance even for Christmas, we can't get a break from the noise.

December 24th at 6:36 p.m. 7:25 a.m. Bass noise started playing when I left for work. Heard in the living room, my room.

1:54 p.m. Bass noise already started. Heavy bass noise heard in living room, my room, upper staircase, lower in kitchen and basement.

2:05 p.m. Brother and fiancé over for late Christmas Eve lunch. Both witnessed the noise disturbance and nuisance [...] sounds like in my room. Lower bass heard in kitchen while having late Christmas Eve lunch even with talking.

4:00ish Open Christmas presents, hard bass in the background. Dad did not come to living room when opening presents. Bass noise stressing him out too much.

4:25 p.m. Bass noise turned down. Low, hard bass. Still heard in living room, my room and lower kitchen and staircase.

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5:00 p.m.ish Brother and fiancé left. Bass noise still playing low.

5:53 p.m. Bass noise turned back up. Hard bass heard in the living room, upper staircase, my room and lower in basement and kitchen. Dad trying to nap as not feeling well and everything with Christmas. Poor dad can't even get peaceful rest.

6:10 p.m. Call for By-Law and advised by dispatch no one on duty in Cambridge, only Kitchener and Waterloo. Left complaining message on By-Law line and advised follow-up with e-mail. Even on Christmas Eve we can't get a break. We can't even have a joyful - enjoyable peaceful Christmas and they are aware of the bass is disruptive as they gave - as they have had over thirty door knocks. I can't believe this has gone on as long and that no resolution has been established considering how long this has gone on. These people have no interest in resolution or mediation.

11:43 p.m. 7:15 bass noise turned off. Was looking out the window and saw the car leave.

10:08 p.m. Bass noise started again in basement when heard noise start. Heard on the main floor, upper staircase, lower hard bass in basement at level of 5:53 p.m. Lasted duration of call to police dispatch and then turned slightly down. No By-Law still - no By-Law on duty still. Interviewed because of dispute to get police officer out. Advised busy night so may be



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awhile. Second visit was a mistake. This is calling By-Law instead of recording how long it was first.

11:34 p.m. Bass not lowered after police went over. My parents were so upset the police came in, nothing done, and they can't get proper sleep. Did not call for By-Law earlier as family want to try and have enjoyable Christmas as possible considering the noise situation. Also, the fact that nothing was done and then it sometimes gets worse. Will be using him as a witness. This is the first mistake - that was the first mistake today. Honestly since Shaun and Constable Neilson was here discussing mediation things have actually gotten worse with the bass noise.

Q. The next set of e-mails starts on 222 and goes to 224. First e-mail is at the bottom of 223.

A.

[As Read] December 25th at 12:41 a.m.

12:40 a.m. Still trying to fall asleep to bass noise with ear plugs and two sleeping pills.

Don't understand how disruptive bass noise that interferes with rights to sleep is still allowed to play at this time and nothing gets done. I'm so worried about my dad. He is still not feeling well, and he cannot go to bed as he says he cannot sleep with this and he is irritated, upset and stressed that no one does anything. By-Law has allowed this nightmare to happen and continue in our home with the way it has been handled.

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This is the worst Christmas ever for my parents and me. We are so sick of this nightmare.

1:13 a.m. on December 25th. Low hard bass noise still playing boom, boom, boom. Just took a third sleeping pill, one of my dad's to see if it helps. Mom also still awake in bed as she just spoke to me when I went to get my dad's sleeping pills and dad's still downstairs in basement as he cannot go to bed with this. Don't understand how this is possible to continue at this hour.

This has gotten worse since mediation was presented again. They are not interested in resolving this. This is why I will not do mediation without my paralegal. Actions speak louder than words and they made it very clear they are not interested in resolving this.

11:18 p.m. on December 25th - Update.

6:38 a.m. Awaken to go to washroom and low bass noise playing. Continuous hard thump, thump, thump. Put my ear plugs back in to go back to sleep.

8:32 a.m. No bass noise when awake. Thank God quieter today as dad is feeling - not feeling well and pressure on his chest today. He has spent the day resting. Don't know what time he went to bed last night as don't want to stress him even more with the discussion. All I know it was after 1:30 a.m. as I was still awake and did not hear him come up to bed. Quiet and we all managed to nap between 2 to 4 p.m.

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8:00 p.m. to 9:28 p.m. Bass noise hard continuous thump. Heard in living room and my room. A million times better than yesterday evening and late night.

9:28 p.m. Bass noise turned down. Lower continues thumps almost subtle.

11:00 p.m. Going to bed. Bass still playing. Lower, softer continuous thumps almost subtle. Don't need sleeping pills and trying to sleep without ear plugs. Taken melatonin to relax as can still feel my chest beating to the bass. A million times better than yesterday [...] left to remove it especially at this time. Nice to be able to watch a movie without hard boom, boom, boom. Hear a car with bass drive by and get anxiety and thinking the neighbours are starting up again. So tired of bass noise in our home.  
10:56 a.m. Just wanted you to know that I received your e-mail.

**THE COURT:** Is this December 29<sup>th</sup> from the police?

**THE WITNESS:** Yes.

**MR. BATTISTON:** Which page?

**THE WITNESS:** Still page 222.

**MR. ELLIS:** 222.

**THE WITNESS:** In response to the e-mail that I sent from the Christmas.

[As Read] Just wanted to let you know I received your e-mails. I'm so sorry to hear your Christmas was not pleasant because of this ongoing issue. I would still encourage you to continue with the mediation process with your

paralegal of course if that is part of your plan. Please feel free to have your brother call me if you feel that would help or you can call me.

Q. 234 and 235. The first e-mails on 235.

A. December 31st at 1:50 p.m.

[As Read] 7:30 and he was still home when I left for work.

10:00 a.m. Dad said bass noise started. Dad said he was making lunch in kitchen when he heard started with hard bass noise. Heard in living room, kitchen and my room. Mom said she was in my room when she heard the base noise start.

Poor parents can't seem to get a break.

11:53 p.m. arrive from work. Walked in kitchen door and bass noise heard. Heard in the kitchen, living room, upper staircase, my room, lower in basement. Dad downstairs lying down as he's not feeling well today. Dad can't even get peaceful rest. Can't call By-Law to help as you don't come - you don't come, don't do anything and they get worse. Just like Christmas Eve this is going to be a lousy New Years Eve. These people have no interest in resolving this matter.

January 1st at 12:06 a.m.

2:07 p.m. Parents having lunch. Bass noise heard in kitchen. They can't even have a peaceful lunch for the end of the New Year.

3:15 p.m. Want to nap but can't as bass too hard in my room and living room.

4:20 p.m. Bass noise turned off.

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7:03 p.m. Bass noise started again. Hard loud bass heard in living room, kitchen, upper staircase. Parents said also heard in basement. They ruined our Christmas Eve and they're also ruining our New Years Eve. We just can't get any enjoyment in our home. How is it when they are listening to music, we have to lose our enjoyment in our home and the number of hours we have to listen to this a day in a week, it's excessive.

9:03 p.m. In upstairs bathroom bass noise heard in bathroom with door closed.

10:00 p.m. Trying to watch New Years Eve with Carson Daly but the noise bass is disruptive, annoying and irritating.

12:45 p.m. Mom and I both going to bed. They have ruined our New Years Eve. Bass was loud and hard today. They still have no interest in resolution - in resolving this through mediation. Bass still loud and hard but we have no one to call for help. Mom is sleeping with ear plugs. I'm two sleeping pills plus melatonin plus ear plugs. I need to be knocked out to sleep. Waiting for pills to kick-in. Dad's still up as he's hoping it turned down soon. They have ruined our Christmas and New Years. How is it we have a right to lose our enjoyment, peace, sleep and rest when these people play the heavy bass music and noise. These people made 2014 a nightmare in my parents' home and they started 2015 in the same manner.

Q. Page 239, 240, 241. The first e-mail starts on 241.

A.

[As Read] January 3rd 3:21 a.m. Awakened to go to washroom. Remove ear plugs and bass noise still playing low. Tonight, a lot of banging going on also. You could put the ear plugs back in to go back to sleep. Another melatonin to go back to sleep. Hopefully will not have to make it a sleeping pill again. So tired of sleeping pills and ear plugs to sleep.

6:04 a.m. 5:53 awakened, ear plugs out, low bass noise still playing constant thumps. Hate weekends. These people seem to play all night. This bass noise never ends.

January 3rd at 10:35 p.m. 8:07 awoke. Removed ear plugs, no bass noise. Finally, off, some peace and quiet. Miss being able to sleep through the night.

10:07 a.m. Bass noise started. In my room getting ready to do meditation. Bass noise heard in the living room, my room, kitchen, upper staircase. It seems it plays all night and already playing in the morning. So tired of the daily, constant bass noise.

10:30 to 11:30 Doing meditation CD, bass noise turned down sometime during second half of meditation. Not a very good meditation; bass noise annoying and irritating.

5:18 p.m. Hard bass noise started. Was lying on couch in my room about to take a nap when it

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started. No nap now. Heard living room, my room, kitchen, subtle in basement. So tired of moving - evenings invaded with bass noise abuse. We lose all our enjoyment when they play music. This is all the time. How is it we go - how is it we have - how is it we do not have a right to enjoyment when these people play music.

6:15 Dad's friend Frank visiting. He heard bass noise in living room, kitchen, kitchen door as he was visiting and chatting. Constant bass noise and let him know that this was a good day as usually harder and hard basement, main floor and upstairs. He said he could not handle this, and he felt sorry for my dad who was sick and still had to put up with the noise, such noise in his home. Frank heard bass turned up - bass up. Frank has been at our home over the years and he even said that what we experienced is disrespectful neighbours. At 8:23 Frank left.

6:23 p.m. Bass noise turned down, not as hard. Heard in living, kitchen and my room.

8:18 Bass noise turned up again harder. Heard in living room, kitchen, my room. Mom said heard in the basement low.

9:52 p.m. Bass noise turned down again. Lower but still hard. Living room, my room with lower in kitchen.

10:18 p.m. Going to bed. Bass noise still playing hard. Sleeping pill plus melatonin plus ear plugs. Waiting for sleeping pill to kick in. This bass noise is a constant violation and loss

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of enjoyment. Don't even have a right to sleep anymore and tired of depending on sleeping pills to cause - to sleep 'cause of daily noise - daily bass noise. So tired of neighbours bass noise in our home night after night. Weekends are a nightmare, always worse and bass noise plays to all hours of the morning. How do my parents after thirty-nine years lose their right to enjoyment? It has nothing to do with a shared wall and everything to do with the way the music is played on their system. We know what is normal noise between a wall. These people have no intention of resolving this.

Q. The top e-mail, 239?

A. I'm sorry.

[As read] 10:50 p.m. Bass hard tonight. Can't sleep with or without sleeping pills as bass vibration doesn't help in the walls and chest. [It should have been ears and chest.] To wake, another sleeping pill to knock me out. Something seriously wrong with this situation; daily constant noise, abuse and invasion.

Q. 242?

A.

[As Read] January 4th at 9:59 p.m.

7:53 a.m. Awoke, no bass noise.

6:05 p.m. Bass - hard bass noise started in basement with parents when dad noticed it started. Heard in living room, my room, kitchen, upper staircase and basement. This is noise



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abuse night after night causing a loss of enjoyment in our home night after night.

8:11 p.m. Bass noise turned down low which Friday and Saturday night. They knew how to turn it down to this level but better - better but still heard in our home. Heard in living room, my room, lower kitchen. Wish we could get it out of our home. Enough is enough. This is daily constant noise disturbance.

9:50 p.m. Getting ready for bed. Low bass noise still playing. Same level since 8:11 p.m. Miss my peace for sleep. Two melatonin plus ear plugs. Try not to take sleeping pills. Will see how long it takes to fall asleep to decide. Hate taking sleeping pills. My sleeping pills make me feel like crap in the morning. Dad's sleeping pills don't have the same effect. We can't even call By-Law as they do nothing and then they are worse. No one should have to listen to this much bass noise evening after evening in their home at any volume for any length of time. This is noise harassment and noise abuse.

Q. 246?

A.

[As Read] January 8th at 10:28 p.m.

5:30 p.m. Looks like no one home when I got home. Call Jason at Community Justice after arriving home to decline mediation as don't believe they are serious about it after the way they got worse over the holidays after Shaun and Constable Neilson came and presented mediation.

Their actions speak louder than words. And we know how bad the bass noise is and how hard they turn it up. We will see how things proceed once they find out how mediation is not moving forward.

8:48 p.m. Subtle bass noise heard. Subtle thumps. Heard the living room. Is sitting on couch. Also feel bass on chest. Going to bed. Bass noise still playing at 10:05. Subtle thumps. Best has been the past three days. They know how to play low when they want to. So nice no sleeping pills or ear plugs for the past few nights.

Q. 248?

A.

[As Read] January 11th at 9:41 p.m.

January 10th. There was no bass noise. Twice heard cars with bass noise driveway, got anxiety thinking it was them starting up again. I get anxiety when home when hear bass noise as always worried starting again. Not sure if they were home most of the day.

January 11th. No bass noise again. Heard car drive by and get anxiety thinking them starting up. Nice to have peaceful home, enjoyment and being able to sleep without sleeping pills or ear plugs this weekend.

Q. Two fifty?

**MR. BATTISTON:** Two?

**MR. ELLIS:** Two five zero.

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A.

[As Read] January 13th at 10:24 p.m.

7:28 a.m. He not home when I leave for work. She outside smoking.

5:30 p.m. He home when I arrive.

6:20 p.m. Low bass noise in kitchen washing dishes when notice bass noise. Heard on the main floor and my room.

7:25 p.m. Bass noise turned up. Low, hard bass noise heard on the main floor, upper staircase and my room.

10:12 p.m. Going to bed. Low bass noise still playing. Back to sleeping pills plus two melatonin and ear plugs tonight. Waiting for the pills to kick in. Also feel the pressure in my chest. So tired of this noise abuse and nightmare in our home. It is never ending.

Q. 258,259. The e-mail starts on 258.

A.

[As Read] January 18th at 10:17 p.m.

12:36 a.m. Bass noise still playing.

1:30 a.m. Dad advised he went to bed and bass noise still loud and hard. Andrew told By-Law he would not lower and he meant it and By-Law allowed him to continue playing regardless of the complaints and witnesses. My parents so upset and stressed about whole situation. What enjoyment and standard of living my parents had for thirty-nine years, now they are told they have no rights to it based on By-Law's perception of noise and shared wall. They are so tired of

hearing excuses of the wall being the problem when it was never a problem for thirty-nine years from people who were not familiar with the house. The house separates - the house is separated by a brick firewall which goes up all the way to the top.

3:40 a.m. Loud hard bass noise playing, startled out of bed. Called for noise By-Law.

3:50 Bass noise turned down. By-Law and police arrived, not sure time. Heard bass noise still playing - playing still but not as loud as when called but still heard by By-Law. No matter what time there is always an excuse for the noise to come through the walls. For thirty-nine years my parents never had this problem. Now it's normal because By-Law's perception of what they think of a shared wall. By-Law heard noise but no one ever says that he needs to do something because you share a wall. This is intentional. He knows there was a complaint earlier and he was asked more than once to turn it down, refused and still continued after 11:00 p.m. and still at 3:30 a.m. Whatever happened to 11:00 p.m. to 7:00 a.m. quiet time? No wonder my parents are feeling helpless. Stressed about everything and this is affecting their wellbeing.

Q. Continues on the next page.

A. Oh, does it?

[As Read] I have watched my dad's health and wellbeing diminished as he has also become quiet and withdrawn from the stress of the whole

situation. See my mom cry 'cause no one will help us.

**MR. BATTISTON:** What page is this?

**MR. ELLIS:** Two fifty.

**THE COURT:** Two fifty-nine.

**THE WITNESS:**

[As Read] Upset regarding noise situation and worried about my dad.

4:10 a.m. Bass noise off.

7:18 p.m. Subtle bass noise heard living room and kitchen. Heard in living room and kitchen. Also feel vibration from bass in chest and living room. Not complaining, big improvement compared to yesterday.

10:00 p.m. Going to bed, no bass noise.

Peaceful and quiet for all of us to sleep. Don't need to take anything or use ear plugs.

**MR. ELLIS:** Q. Two sixty-two?

A.

[As Read] January 20th at 10:10 p.m.

5:23 a.m. Awakened from my sleep. Low, hard bass noise heard. Lying in bed, feel bass beating on chest. Why is it playing during this quiet time when people sleeping?

6:08 a.m. Bass noise turned down. Low almost subtle bass noise.

7:28 a.m. He's still home when I leave for work.

5:28 p.m. He home when I arrive. No bass noise.

9:45 p.m. Going to bed, no bass noise. No ear plugs or sleeping pills needed tonight. Mom advised quiet during the day. Good quiet day for

dad as he not feeling well today. No bass noise this evening just early this morning.

Q. Two sixty-six?

A.

[As Read] January 23rd at 10:54 p.m.

Although bass noise yesterday January 22nd was subtle, still annoying and nuisance to try and fall asleep to. Took over forty-five minutes to fall asleep. No ear plugs but took melatonin to fall asleep. Hate taking sleeping pills. Do not want to write follow-up e-mail so not to disrupt sleepiness.

7:28 a.m. He not home. I'm leaving for work. She outside smoking.

4:26 p.m. He home when I arrive from work.

4:50 p.m. No bass noise. Sitting in living room talking to my mom. Been awhile since done that as my parents are always in the basement now. Mom said she and dad had spent time in living room today during the day as no bass noise. She said they enjoyed being in the living room again, no bass noise.

7:43 p.m. Subtle bass noise heard, thumps. Heard subtle in living room, kitchen also feel bass in chest. Did not check room for noise.

9:03 p.m. Bass noise off. Nice off at a reasonable time.

10:32 p.m. Going to bed. Mom also going to bed. Dad still downstairs, no bass noise. Hopefully stays quiet all night and morning.

Q. 269, 270.

A.

[As Read] January 25th at 12:27 a.m.

Awakened to tv with surround sound on. Rumbling surround sounds with bass noise. Back to ear plugs and sleep pills to sleep again. My dad also heard it and he is so tired - and is so tired and upset with the - of whole situation. Dad was taking sleeping pills to sleep but instead of going to bed he went back downstairs as he could not sleep with such noise. This has taken a toll on his wellbeing and all our wellbeing's mentally, emotionally and physically. Don't even have a right to sleep during quiet time. After thirty-eight years they lose rights to peace, enjoyment and sleep in their own home. Police and By-Law are responsible for this by not enforcing by-laws and serving to protect.

7:36 p.m. Low bass noise in living room, kitchen and bedroom. Low bass noise and bass vibrations felt on chest.

10:48 p.m. Going to bed. Low bass noise still heard and felt in chest.

On January 26th 7:28 a.m. He not home, I'm leaving for work.

5:26 p.m. He home when I arrive from work. No bass noise. Mom advised no bass noise during the day.

10:00 p.m. Going to bed. Subtle bass noise heard. Subtle but did not notice it had started. Much better than what we've been listening to all year. Took a little longer but managed to fall

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asleep without ear plugs or sleeping pills.

Still wish they would turn it off during the evening, a nuisance at night.

January 27th 7:28 a.m. He home when left for work.

5:27 p.m. He not home when I arrive from work.

No bass noise. Mom advised no bass noise during the day. It was nice to see my mom using the living room again. Parents always downstairs to get away from noise.

7:08 p.m. Return from grocery store and he's still not home.

10:45 p.m. Going to bed. Very subtle bass noise heard, almost like an echo. Subtle but did not notice when started. Again, took a little longer but again managed to fall asleep without ear plugs or sleeping pills. Best since - best been since the noise issue started.

January 28th 7:30 a.m. He not home when I left for work. She outside smoking.

5:28 He not home when arrive from work. No bass noise. Mom said no bass noise during the day.

6:45 p.m. Leaving for appointment. Neighbours not home.

10:10 p.m. Arrive from appointment. Neighbours home. Parents advise no bass noise while I was out.

10:30 p.m. Going to bed. Again, subtle bass noise like echo. Do not know what time started. Managed to fall asleep without ear plugs and sleeping pills.



January 29th 7:20 a.m. He home when leaving for work.

5:38 p.m. He home when arriving from work. No bass noise. Again, nice to see mom using upstairs as no bass noise, watching tv. Mom advised no bass noise during the day.

10:08 p.m. Going to bed. No bass noise heard. So nice to have peace and quiet to sleep with no constant noise nuisance. As you can see, they can play it at a level that was non-disruptive. By-Law and police are responsible for this continuous - do not enforce by-laws and actually support his behaviour.

On June 10th with Shaun steps were taken to show - that show he could play without being disruptive. Showing wall has nothing to do with situation plus parents have owned and lived in their home for over thirty-eight years with no problems of right to enjoyment and peace. Now these people take it away on almost daily basis. It has nothing to do with the wall and everything to do with the way they play their music on their system.

**MR. BATTISTON:** Your Honour, we're getting away from the facts and we're getting into a lot of editorial that is also hearsay.

**THE COURT:** I understand that. I understand that. I can read that as well.

**MR. BATTISTON:** At some point we're going to review all of this but these long speeches and

editorializations I will have a problem with later on.

**MR. ELLIS:** I'd been fine if she didn't read it. I just thought that she should finish the e-mail.

**THE COURT:** I would like her to finish the e-mail 'cause then we're done for the day.

**MR. ELLIS:** Yes.

A.

[As Read] I'm going to do January 30<sup>th</sup> on another e-mail as again we are listening to bass noise and By-Law is not on duty but does not matter as nothing is done unless I replay it as a disruptive level until 4:00 a.m. and I had to call By-Law at 3:45 p.m. My brother is right, there should be a criminal mischief matter even - Frank Monterio(ph) suggested criminal mischief in an e-mail to us before my brother did if courts do not help us.

**THE COURT:** All right we're going to adjourn from that point forward. You'll be getting notices from the court provided that the February 27th date is acceptable. I don't see why it shouldn't be, but you'll be notified in any event. You'll get another notice of trial. I am going to endorse the record,

Trial not complete, on consent adjourned to February 27th at 10:00 a.m. One day required.

But if you want to take less than one day that certainly is fine. All right.

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**CLERK OF THE COURT:** All rise. Court is closed for  
the day.

5

C O U R T     A D J O U R N E D

(4:35:33)

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15

20

25

30

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Certification.

**FORM 2**

Certificate of Transcript  
*Evidence Act*, subsection 5(2)

5 I, **Gloria Scheerer**, certify that this document is a true and  
accurate transcript of the recording of ***Fiuza et al vs. Creekside***  
***et al*** in the Small Claims Court, Superior Court of Justice held  
at **85 Frederick St., Kitchener**, Ontario, taken from Recording No.  
10 **4411-CRTRM-504-20180116-091318\_2\_SCC**, which has been certified in  
Form 1 by Patrick Kennedy.

June 14, 2019

*CCR, ACT*

.....

15 (Date)

(Signature of authorized person)

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25

30