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Politicians, not courts, must stop island airport plan

Chicago's mayor had right idea

Area residents lost similar legal battle in Vancouver

My first choice for the next mayor of Toronto isn't even on the ballot.

With the island airport expansion and a fixed link rapidly becoming a central issue of the campaign, and with tens of thousands of people living within sight and, even worse, sound of the airport, Torontonians can only look with envy at the likes of Chicago Mayor Richard M. Daley.



In the dead of night late last March, carrying out a scenario that might have come from a Schwarzenegger movie, a construction crew protected by a squad of police raided Chicago's downtown Meigs Field island airport.

Acting under the direct orders of Daley, who cited "homeland security issues" as his reasons, the bulldozers proceeded to carve six giant X-shaped patterns into the concrete and asphalt of the runway.

Within a few hours, Chicago's downtown island airport was history, and the way was open for acres of new parkland.

Unlike Chicago's version of Ontario's red tape reduction initiative, Canadians are far more genteel about putting up with the noise from a city core airport.

Our version of Meigs Field was fought out recently in the courtrooms of Vancouver and Ottawa.

Wilfred Gary Sutherland and 140 of his neighbours sued the Attorney General of Canada and the Vancouver International Airport Authority.

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

In their lawsuit, the plaintiffs claimed that the aircraft using the north runway created "excessive, deafening and disturbing noise and vibrations," which caused each of them "substantial and unreasonable interference with the residential use and enjoyment" of their property.

Basing their lawsuit on the legal doctrine of nuisance, the plaintiffs claimed that the noise and vibrations interfered with:

- Normal conversations inside and outside the house and with the use of telephones, radio and television.
- Daily tasks.
- The quality of rest and sleep.
- The reasonable and comfortable use of gardens, patios and yards.
- The normal use and enjoyment of community amenities.

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

At trial, the homeowners won a resounding victory, along with substantial damages for nuisance and reduction of property values.

In the summer of 2002, however, the British Columbia Court of Appeal reversed the trial decision.

It said there was clear statutory authority for the location, construction and operation of the runway in question.

The noise nuisance suffered by the plaintiffs was the inevitable result, and they could not sue to recover damages.

Since the statute gave the airport operator authority for the new runway, the court said there was an express or implied right to cause a nuisance by carrying out the statutory obligations. When Parliament authorized the airport, the court presumed that it authorized the nuisance as well.

In May, 2003, the Supreme Court of Canada refused an application for permission to appeal the decision. No reasons were given.

I don't know whether the result would be the same if a group of Queens Quay condo dwellers started a similar lawsuit in this city.

Parliament, of course, has not authorized the bridge at the foot of Bathurst St., so a nuisance argument might carry the day in Ontario courts.

In addition to the nuisance factor, Toronto also has an added safety factor to consider. This summer alone, two small aircraft crashed into the lake on their way to the island airport.

I also believe the bridge will be a serious navigation hazard.

On election day, Nov. 10, those of us who love this city's waterfront can act where the Supreme Court of Canada let the Vancouverites down.

We can vote for a mayor and councillors who will accomplish at City Hall what Daley did with his bulldozers.

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