Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Martinolich v. Gibbs*, 2026 BCCRT 424

B E T W E E N :

LENORE MARTINOLICH and ROBERT MARTINOLICH

APPLICANTS

A N D :

LISA ANN GIBBS and GREGORY GIBBS

RESPONDENTS

A N D :

LENORE MARTINOLICH and ROBERT MARTINOLICH

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Peter Nyhuus

INTRODUCTION

1. Until recently, the applicants, Lenore Martinolich and Robert Martinolich, and the respondents, Lisa Ann Gibbs and Gregory Gibbs, were next-door neighbours. The Martinoliches say the Gibbses interfered with their use and enjoyment of their property by frequently playing loud music with deep bass. They seek $5,000 in damages for nuisance, verbal and physical abuse, pain and suffering, and legal costs.

2. The Gibbses admit to playing music for about 2.5 hours every other day during Mrs. Gibbs' exercises, but they deny this caused a nuisance. They say the municipality investigated the Martinoliches' noise complaints and found they were not violating its noise bylaws.

3. The Gibbses say the Martinoliches' conduct related to the noise complaints and other issues caused them undue stress, anxiety, and mental anguish. They also say they wasted $2,383.07 on soundproofing their gym wall and $33.48 on privacy screens. In their counterclaim, they seek reimbursement of these expenses and $2,458.45 for abuse and harassment, vexatious behaviour, and mental anguish. They claim $5,000 in total. The Martinoliches deny the Gibbses' claims.

4. All parties are self-represented. For reasons I will explain, I dismiss all parties' claims.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness. These 2 disputes are a claim and a counterclaim involving the same parties and related issues, so I have written 1 decision for both disputes. These are the CRT's formal written reasons.

6. CRTA section 39 gives the CRT discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these.

7. The parties made submissions and provided documentary evidence intended to undermine each other's credibility, or truthfulness. While I agree that credibility is relevant to this dispute, I find it is less important here than the parties' make it out to be. With some exceptions, the parties generally agree about what happened but disagree about whether their actions were harmful or reasonable. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. The advantages of an oral hearing must be considered in light of the CRT's mandate to resolve disputes in a speedy, informal, and accessible manner. Here, no party formally requested an oral hearing. The parties provided very lengthy written submissions and hundreds of pieces of evidence. I find I can make the necessary findings based on these materials, so I decided to hear this dispute through written submissions.

8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

Evidence Issues

9. The parties provided evidence about the opposing parties' character. For instance, the Gibbses provided audio recordings of other neighbours discussing the Martinoliches' prior conduct. The Martinoliches provided evidence about the Gibbses' political views. The Court of Appeal in *Weizmann v. Polar Bear Electronics Ltd.*, 2019 BCCA 132 at paragraph 13, held that character evidence is not relevant or admissible evidence. So, I have not considered any of this evidence in my decision.

10. The Gibbses uploaded 5 pieces of documentary evidence late. CRT staff informed the parties that the evidence would be marked late and directed them to provide comments on the late evidence in their written submissions. The Martinoliches did

not oppose the late evidence in their submissions. As the evidence is relevant and the Martinoliches had an opportunity to respond, I find it is procedurally fair for me to consider it in this decision.

Anonymization Request

11. The Martinoliches requested that I anonymize their names in this decision. The Gibbses oppose their request.

12. Parties are generally named in CRT decisions, consistent with the open court principle, which promotes transparency and integrity in the justice system. See *Midwinter v. The Owners, Strata Plan BCS 1347*, 2023 BCCRT 1117, at paragraph 13. CRT rule 10.4 requires the CRT to consider its *Access to Information and Privacy Policy*, which states that parties' names will generally be included in published decisions, unless there is a need to protect a party's identity, such as if they are a minor or an adult with impaired mental capacity.

13. The policy says the CRT will consider the following in deciding whether to anonymize a decision:

    a. The dispute's circumstances and the nature of the evidence provided,

    b. The potential impact of disclosure on the person and any others impacted by the dispute, and

    c. How anonymization would impact the CRT's goals of transparent decision-making and protection of personal information.

14. The Martinoliches say they are concerned about the adverse impacts a published decision would have on their privacy and well-being. They say the Gibbses filed false and misleading information which may cause embarrassment, reputational damage, and potential harassment from others. They also say they shared personal health information that should remain private.

15. As I noted above, this is a dispute between former neighbours arising from noise complaints. The Martinoliches claim financial compensation for the harm the Gibbses allegedly caused them. I find the circumstances and the evidence are not unique or particularly sensitive. All parties are adults and there is no evidence of impaired capacity. The Martinoliches have not explained how the publication of their names in this dispute could cause harassment from others.

16. I find the Martinoliches' reasons for requesting anonymity do not outweigh the importance of transparency and the open court principle. So, I deny their anonymization request and use their names in this decision.

17. While I have denied the Martinoliches' anonymization request, I acknowledge that the Gibbses have provided irrelevant evidence that could cause embarrassment. So, I exercise discretion in the evidence I choose to discuss in this decision.

Harassment Claims

18. The parties allege that the other parties were verbally abusive and harassing. There is no recognized tort of harassment in BC. See *Tan v. British Columbia (Housing Management Commission),* 2025 BCSC 49 at paragraph 20, and *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473 at paragraph 61. For this reason, I dismiss this aspect of their claims.

ISSUES

19. The issues in this dispute are:

    a. Did the Gibbses cause a nuisance, and if so, what is an appropriate remedy?

    b. Do the Martinoliches owe the Gibbses any compensation for soundproofing costs or causing undue stress, anxiety, and mental anguish?

EVIDENCE AND ANALYSIS

20. As the applicants in a civil proceeding like this one, the Martinoliches must prove their claims on a balance of probabilities. This means “more likely than not”. The Gibbses must prove their counterclaim to the same standard. I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

The applicable law and the Martinoliches’ claims

21. The Martinoliches base their claims on the law of nuisance. A private nuisance is when a person substantially and unreasonably interferes with another person’s quiet use and enjoyment of their land or property. A substantial interference is one that is more than mere inconvenience or minor discomfort. See *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13 and *British Columbia (Minister of Public Safety) v. Latham*, 2023 BCCA 104.

22. The test for nuisance is objective. It requires proof that the interference is something that would not be tolerated by an ordinary person. See *Wasserman v. Hall*, 2009 BCSC 1318, at paragraph 85. An ordinary person is someone whose notions, standards of behaviour, and responsibility correspond with those generally found among ordinary people in our society. They rarely allow their emotions to take over their reasoning. Their habits are moderate and their disposition is equitable. See *Wolodko v. Zhang*, 2014 BCSC 512 at paragraph 33. The objective requirement guards against those with abnormal sensitivity or unreasonable expectations. See *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024.

23. Whether noise constitutes a nuisance depends on factors such as its nature, intensity, frequency, duration, and timing. The courts acknowledge that there must be a “certain amount of give and take” between neighbours. See *Sauve v. McKeage et al.*, 2006 BCSC 781.

24. The parties lived next door to each other in detached houses in a suburban neighbourhood. The noise at issue began in late January 2024, after the Gibbses set up a home gym in a room about 10.5 feet from the Martinoliches' house.

25. From late January until the Martinoliches moved away in September 2024, Mrs. Gibbs worked out in her home gym while listening to music. She usually did this every other day for about 2 to 2.5 hours during the middle of the day. Less frequently, she worked out in the early evening.

26. The Martinoliches are a retired couple and were usually at home when Mrs. Gibbs worked out. They could hear the thumping of the music's bass inside their house and on their outdoor patio. They could not hear the actual music, voices, or lyrics. They say that no matter what room of their house they were in, they could not escape the noise and vibrations. They provided many videos with audible bass. I note that most of the videos were taken on their outdoor patio rather than inside.

27. Mr. Martinolich first complained about the music on January 30 and 31 through text messages to Mr. Gibbs. Mr. Gibbs replied to say he would take care of it. However, the Martinoliches continued to hear the bass. The Martinoliches say they tried knocking on the Gibbses' door on January 31, but no one answered.

28. Around this time, the Martinoliches started making bylaw complaints. On February 7, a bylaw officer, VH, attended the Gibbses' house. This angered the Gibbses, whose dog was very sick at the time. Mr. Gibbs went over to the Martinoliches' house and confronted Mr. Martinolich at his front door, asking why he did not complain to the Gibbses directly. Around the same time, Mrs. Gibbs yelled at Mrs. Martinolich while she was on her patio.

29. The Gibbses both admit they insulted the Martinoliches and used profanity during this confrontation. I will not repeat what the Gibbses said, but I find it was both offensive and needlessly aggressive. The Gibbses say this was not their "finest moment". They say they were very stressed by their dying dog and annoyed that the Martinoliches called bylaw officers instead of speaking with them.

30. The parties provided the municipality's bylaw department's redacted service records. The records show that VH witnessed what Mrs. Gibbs said to Mrs. Martinolich and told her there was no need for name calling and escalation.

31. I note that the Martinoliches say one of the Gibbses threatened to make their life "hell". The Gibbses deny saying this and VH did not record them saying this. Regardless of whether they said this, I find the Martinoliches did not feel genuinely threatened by the Gibbses. I say this because the next day, the Martinoliches invited Mr. Gibbs into their house to listen to the noise. At this meeting, the parties reconciled to some extent. The Martinoliches say Mr. Gibbs admitted to their bad behaviour from the previous day and told them he wanted to work out a situation they could all live with. They say Mr. Gibbs then adjusted the speaker's volume and found a level that was acceptable to the Martinoliches.

32. However, on February 10, the Martinoliches texted Mr. Gibbs to say the music was louder than they agreed to. Mr. Gibbs returned to the Martinoliches' house to listen but told them he could not hear anything. He also told them he would fix the insulation in the wall to try to dampen the sound. Around this time, the Martinoliches purchased a sound pressure level meter and began taking decibel readings of the noise.

33. February 10 was the final time the Martinoliches texted the Gibbses about the noise. However, the Martinoliches continued to make bylaw complaints. Over the next 3 months, VH attended the parties' houses on several occasions to take sound measurements. The service records show VH's interactions with the parties, meter readings, and the Gibbses' efforts to quiet the sound.

34. I note that VH's investigations were intended to determine whether the Gibbses' music was compliant with the municipality's noise bylaw. The bylaw prohibits a person from causing sound in a neighbour's property that exceeds 70 C-weighted decibels (dBC) during the daytime. In the absence of expert evidence about the impacts of low-frequency noise, I find the municipality's noise bylaw sets a reasonable baseline for a reasonable person's tolerance for noise in the parties'

neighbourhood. I also find the bylaw officers' notes provide the best objective evidence of the noise's quality. While the officers' enforcement decisions do not determine whether there was a nuisance, I find their observations are helpful in assessing whether the noise was more than a mere inconvenience and unreasonable to an ordinary person in the circumstances.

35. I note that the Martinoliches provided Word documents with information about low-frequency noise. I infer the Martinoliches created these documents by copy-pasting from Wikipedia and other online sources. Since I cannot confirm the source or authenticity of these materials or the qualifications of their authors, I find they are not reliable evidence. The Martinoliches did not provide any other expert evidence about the impacts of low-frequency noise.

36. On February 24, VH and another bylaw officer took measurements both within the Martinoliches' living room and on their patio. VH recorded the sound as being within the acceptable limit inside the house, but above the acceptable limit on the patio. The bylaw officers then went to the Gibbses' house and gave them a warning that they could be issued a fine each day the sound exceeded the limit. After the Gibbses adjusted the volume, the officers took another reading from the Martinoliches' balcony and found the noise no longer exceeded the 70 dBC limit. VH noted that the Martinoliches told them they could live with that level of sound.

37. Over the next 2 months, the Martinoliches made more bylaw complaints and alleged that the Gibbses had turned up the volume. While VH returned to take further sound measurements, they did not register any further noise above the bylaw's limit.

38. The records show that the Gibbses made various adjustments to their home gym to try to satisfy the Martinoliches. The Gibbses moved the speaker to the corridor outside the home gym and angled it away from the Martinoliches' house. They removed an old gas stove that may have been funnelling the bass out of the house. They took down the inside wall and rebuilt it back with soundproofing sheets and insulation. They purchased their own sound meter to try to ensure they were staying within acceptable limits.

39. I note that VH also provided their opinion to the Martinoliches in an email dated February 28. They wrote that they found Mrs. Gibbs' exercise routine to be a reasonable use of her property with a reasonable duration and at a reasonable time of day. The bylaw officers ultimately closed the Martinoliches' noise complaint file on May 16, without issuing a bylaw infraction.

40. The Martinoliches kept a noise log that shows the noise generally continued at the same frequency and duration, every other day for roughly 2 hours, until they moved in September.

41. I find the Martinoliches have proved that the noise substantially interfered with their property, especially their back patio where the noise was loudest. I find it went beyond a minor discomfort. The Martinoliches have provided evidence that they sought medical attention for migraines and other ailments they say were caused by the noise. They ultimately sold their house to escape the situation. So, I accept that the interference was non-trivial.

42. However, the question in this nuisance claim is not whether the Martinoliches suffered what they consider a substantial discomfort or inconvenience, but whether a reasonable person who resides in that locality would take the same view of the matter. See *Wolodko* at paragraph 33.

43. For the following reasons, I find the Martinoliches have failed to prove that the non-trivial interference with their property was unreasonable in the circumstances.

44. I find the noise's frequency, duration, and timing point to the interference as being reasonable in the circumstances and within the "give and take" expected of neighbours. The noise occurred for roughly 2 hours every other day, and usually during the middle of the day when most people are neither bound to their homes nor trying to sleep. I find an ordinary person could work with the Gibbses to develop a routine around the noise to limit the noise's impact on their lives.

45. I also find that playing music while exercising was a reasonable use of Mrs. Gibbs' home. Given that the noise bylaw allows for sound to travel to neighbouring

properties during the daytime, I find a reasonable person must accept they would hear the noise and try to reasonably accommodate it.

46. It is the nature of the noise, the thumping bass, that appears to have been exceptionally frustrating for the Martinoliches. In *Bouioruov v. The Owners, Strata Plan KAS 3485*, 2026 BCCRT 254, a CRT member reasoned that a reasonable person is more tolerant of everyday living noise or involuntary noise, and less tolerant of preventable noise. I agree with this reasoning and find it partly explains the Martinoliches' intolerance of the noise. They argue that this situation could have been avoided had the Gibbses simply turned down the volume during Mrs. Gibbs' workouts.

47. However, I find the Gibbses did turn down the volume and took reasonable steps to dampen the sound. The Martinoliches' own sound meter readings show lower decibel readings beginning in late February, after the Gibbses worked with the bylaw officer to find the appropriate sound levels. For instance, the Martinoliches' sound meter captured decibels on their patio in the high 70s and low 80s in mid-February. On February 27, the Martinoliches observed Mr. Gibbs outside, between the houses, while holding a sound meter. In their noise log they noted that Mr. Gibbs was trying to resolve the issue. From this time on, the Martinoliches did not log any further readings in the high 70s. Typically, the readings were in the 60s or low 70s.

48. I note that the Martinoliches' sound meter regularly captured decibel readings that were above the bylaw's limit. However, for 2 reasons, I find their sound meter's readings are unreliable. First, the Martinoliches say that VH told them that the Martinoviches' readings were consistently 10 decibels above VH's. Given that VH is a professional bylaw officer, I find it likely that VH's sound meter was of a better quality than the Martinoliches' meter and that they received training on their sound meter's proper use. I also note that VH's notes show that they would calibrate their sound meter before taking measurements. The Martinoliches say their unit was calibrated when they purchased it, but that they have not calibrated it since. The

Gibbses provided a screenshot of a device that can be used to calibrate the applicant's sound meter. I infer the Martinoliches do not own this device. So, I find it likely that the Martinoliches' sound meter did not produce as accurate readings.

49. The Martinoliches provided a video dated March 10. That day, Mr. Gibbs had been working to soundproof the home gym. Afterwards, he walked between the houses to take sound readings to check his work. In the video, Mrs. Martinolich yells at Mr. Gibbs from her porch. She says the sound is not good enough. The video shows that the parties' exchange then deteriorated into personal insults. The Martinoliches later complained to VH about the sounds of the Gibbses' soundproofing construction.

50. While I accept that the relationship between the parties had broken down by this point, the test for nuisance requires the complainant to not allow their emotions to take over their reasoning. After the parties' February 7 confrontation, I find the Gibbses took steps to address the noise's nature and intensity. I find they brought the noise down to within the limit deemed acceptable by the municipality and that they played the noise at a reasonable time of day for a reasonable amount of time. I find that a reasonable person in the Martinoliches situation would continue to collaborate with the Gibbses to find the appropriate noise level. Instead, I find the evidence shows that the Martinoliches were unreceptive to the Gibbses' efforts to lessen the noise interference and unwilling to collaborate with them. I find they became unreasonably focused on the existence of the noise itself, not whether the noise was reasonable.

51. In all, I find the Martinoliches have not proved that the Gibbses' noise created a nuisance. I dismiss their claim for damages.

The Gibbses' counterclaim

52. The Gibbses raise many issues in their counterclaim about the Martinoliches' behaviour. They say the Martinoliches attempted to police the neighbourhood, berated them over issues relating to their dog, hired their lawyer to send threatening

demand letters about the noise, filmed Mr. Gibbs while mowing his lawn, and spied on them. They say they should be compensated for the stress, anxiety, mental anguish, and harassment this behaviour caused them and for the cost of renovating their home gym to add soundproofing.

53. While I accept that the Gibbses felt stressed about the Martinoliches' noise complaints, I find this does not entitle them to compensation. I find the Martinoliches' complaints were not vexatious or made in bad faith. The Martinoliches have proved they could hear noise coming from the Gibbses' house. I expect that if the Gibbses had not taken steps to soundproof their home, then the noise would have constituted a nuisance. So, I find they are not entitled to compensation for the costs of soundproofing.

54. The Gibbses say the Martinoliches breached their privacy by taking a photograph of Mr. Gibbs in his backyard. The Martinoliches provided a photograph, which shows Mr. Gibbs wearing earbuds, as part of an argument that Mrs. Gibbs could have worn earbuds during her exercises.

55. The court has found that the use of video cameras to purposely observe a neighbour's property may be an actionable private nuisance. See *Suzuki v. Munroe*, 2009 BCSC 1403. However, the court has also found that taking photographs of another's property may be acceptable when providing corroborating evidence in a civil claim. See *Pellegrin v. Wheeldon*, 2020 BCPC 143 and *Croxall v. Laverdure and Graham*, 2024 BCPC 176.

56. While I find the picture of Mr. Gibbs was unhelpful in deciding whether the Gibbses' music was a nuisance, I accept the Martinoliches took the picture in good faith to try to generate evidence for this proceeding. So, I find it did not constitute a nuisance.

57. I note that section 1 of the *Privacy Act* creates a tort for the violation of another person's privacy. However, section 4 states that an action for such a tort must be heard and determined by the BC Supreme Court. So, to the extent the Gibbses argue the picture was a breach of privacy, I refuse to resolve this claim.

58. The Gibbses also argue that Mr. Martinolich inappropriately changed in his backyard before getting into his hot tub. Mr. Martinolich denies changing in his backyard or inappropriately. Even if Mr. Martinolich changed in the manner alleged by the Gibbses, I find this does not entitle them to damages. The Gibbses have not provided evidence that they told Mr. Martinolich they could see him changing or that they considered it inappropriate. Instead, they installed privacy screens on the fence.

59. The parties provided pictures of their views of the other property's backyard, both before and after the privacy screens. I find the privacy screens likely solved this alleged problem. However, I find the Gibbses are not entitled to reimbursement for this expense. I find the Gibbses could have also avoided the problem by averting their eyes or by asking Mr. Martinolich to change differently.

60. I have no doubt that this conflict caused the Gibbses stress and anxiety. However, I find they have not proved that this entitles them to compensation. So, I dismiss the Gibbses' counterclaims.

61. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Since no party was successful in their claims, I find they are not entitled to any reimbursement. The parties can bear their own costs.

ORDER

62. I dismiss the parties' claims.

63. I refuse to resolve the Gibbses' claims under the *Privacy Act*.

Peter Nyhuus, Tribunal Member