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Re: Smith v. Magna International - Message (HTML)

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From: Kevin, Campbell Sent: January-10-12 3:27PM
To: Thompson, Pamela A. (LNG-HBE)
Subject: FW: Smith v. Magna International

Message Nuisance memo.pdf (104 KB)

Sir,

I work for **Bennett Jones LLP** in Edmonton and I currently represent **Magna International Inc.** in Smith v. Magna International, an action wherein Ms Smith is seeking a permanent **injunction** to prohibit certain noise inducing activities alleged to be occurring at the defendant's private corporate park, and for **damages** sustained by the alleged **nuisance**. The issue in the case is whether or not the present use of the defendant's premises comprises an actionable **nuisance** by which Ms Smith is entitled to injunctive relief accompanied by or independent of **general damages**. This matter was heard on January 3, 2012 in the Alberta Court of Queen's Bench by Justice Suzanne Bensler. She found on a balance of probabilities that some of the activities conducted in this park have, on an irregular basis, generated sound waves that reach the Smith property, of a decibel level that constitutes an actionable **nuisance**. Having reached this conclusion, she invited counsel to make submissions on the appropriate **remedy**. The hearing is scheduled for March 15, 2012.

I have been reviewing the caselaw in preparation for the upcoming hearing and I notice that you represented **Benshuler Inc.** in similar actions reported [2000] F.C.J. No. 2093 and [2011] J.Q. no. 1987. I wonder if you might be available for a telephone conversation regarding the current state of the law in this area. In particular I am wondering if you believe the recent case of Strand Theatre Ltd. v. Prince Albert, reported at [2011] S.J. No. 372 and which I have attached hereto, is capable of changing the state of the law.

It is interesting to note that the penalties imposed by Alberta Regulation Alta. Reg. 233/89 s.3 were not claimed in this case and so are not in issue. Neither is the **common law** concept of **nuisance** discussed in the US case TULL v. UNITED STATES at 481 U.S. 412 which you know has been in the Canadian news lately.

I have attached a brief memo on nuisance for your reference.

I look forward to talking with you.

Best regards,
Kevin Campbell LL.B.

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LexisNexis

Magna Internatio... Company Magna International Inc.

About

Terms: COMPANY-INFO(MAGNA INTERNATIONAL INC.)

1. LexisNexis® Corporate Affiliations, March 27, 2012, Magna International Inc., 337 Magna Drive, Aurora, ON, L4G 7K1

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Cases

Jurisdiction All Canadian Jurisdictions

1. Orr v. Magna Entertainment Corp., [2008] O.J. No. 116 ~ 24pp, ONTARIO SUPREME COURT OF JUSTICE, January 16, 2008, Ontario Judgments

2. Orr v. Magna Entertainment Corp., [2009] O.J. No. 5818 ~ 11pp, ONTARIO COURT OF APPEAL, June 16, 2009, Ontario Judgments

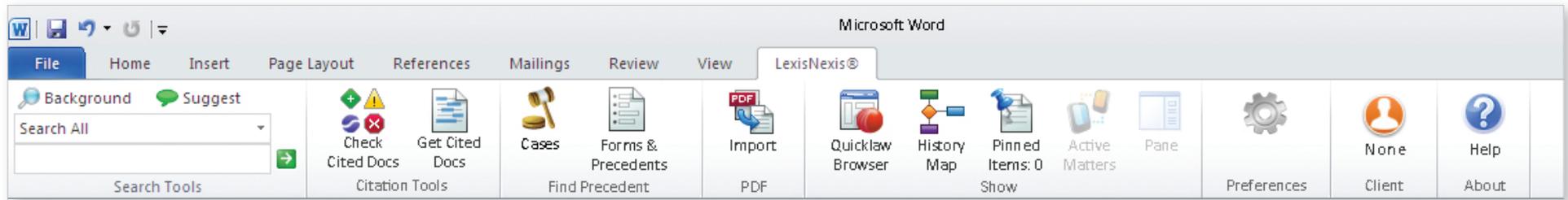
3. Magna International Inc. (Re), [2010] O.J. No. 3719 ~ 12pp, ONTARIO SUPREME COURT JUSTICE DIVISION COURT, August 30, 2010, Ontario Judgments

4. Magna International Inc. (Re), [2010] O.J. No. 3454 ~ 33pp, ONTARIO SUPREME COURT OF JUSTICE, August 17, 2010, Ontario Judgments

5. 1175777 Ontario Ltd. v. Magna International Inc., [2007] O.J. No. 2549 ~ 20pp, ONTARIO SUPREME COURT OF JUSTICE, June 27, 2007, Ontario Judgments

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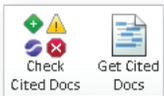
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