

Hosel rockets: The case of nuisance and Benny the Cat | Michael Cochrane

By **Michael Cochrane**

Law360 Canada (February 7, 2025, 2:34 PM EST) -- One of the unexpected pleasures of playing golf can be the beautiful sounds experienced while on the course. I'm not talking about the wind whistling through the trees, birds chirping merrily or the burbling of brooks that may dot a course. I'm talking about the sound made by pure contact of golf ball on driver, of the soft thump of a crisp wedge shot as it stops softly on a green and, of course, the sweet hollow rattling clunk of a putt dropping in the cup. Those are the sounds that keep golfers coming back.



Michael Cochrane

But there are other sounds too, troubling ones, sounds that induce winces, embarrassed gulps and whispers of "That's gone." These are the sounds of golf balls hitting shingles, metal roofs, aluminum siding, stucco, gazebos, cars, windows, patio furniture, lawn ornaments, skylights, statues, decks and, in one alarming case, Benny the Cat. These are the sounds of a golf ball that has gone out of bounds onto a property adjacent to the course.

It can also be the sound of litigation.

Whether it be Nova Scotia, Ontario, British Columbia, Manitoba, even Saskatchewan for heaven's sake, no Canadian province has been immune to actions by property owners suing golf courses and driving ranges for the aerial assault of errant golf balls.

The situations have a familiar pattern to them: the plaintiffs own a home adjacent to the course or range. In some cases their home was there first, often for many years, with the course being constructed later. In other cases the couple bought or built the home knowing full well that it backed onto a fairway or range.

At some point the balls begin to arrive. A few trickle harmlessly into the yard, golfers even come on the property sheepishly to retrieve them. It's a minor inconvenience, not totally unexpected. But then it escalates — like in *Carley v. Willow Park Golf Course Ltd.*, 2002 ABQB 813, where the traumatized couple, who had bought a home next to a club's driving range, collected in the first year, 174 balls, the next year 88 and then the following year 176 — a total 438 golf balls over three Alberta golf seasons. (Note, every one of those balls was entered as an exhibit.)

Mind you, that was nothing compared to the situation faced in *Douglas Lake Cattle Co. v. Mount Paul Golf Course (SPM) Inc.*, 2001 BCSC 566, where the plaintiffs collected no fewer than 2,577 balls — in one year. Even being generous with the length of their golf season, that would be at least 12 balls a day pelting the property and damaging equipment. Employees and customers had to be running for cover with shouts of "Incoming!"

Thankfully none of the reported decisions have had to deal with injuries to homeowners or their children. True, it's about property damage, but more often than not the real problem is fear, the inability to use their yard without the dread of being drilled by a golf ball. In one case the worried husband installed a gazebo for his wife to safely enjoy the yard. Its shatterproof window was promptly hit and cracked by a ball. That's when the lawyers got called.

A common reaction to these situations has been, "What did you expect living next to a golf course?"

Of course there will be golf balls. You have basically consented to the problem by living there.” That somewhat callous response misses some very important points.

I assure you, the Benny the Cat incident is coming but first let’s take a look at the law.

These claims are generally framed under three headings: negligence, trespass and nuisance. The damage claims are usually minimal (no award has ever topped \$20,000) and the priority relief sought is injunctive. The plaintiffs want to stop the golf balls so they can use their property in safety.

In Toronto’s *Sammut v. Islington Golf Course*, [2005] O.J. No. 2674, the elderly homeowners sought an injunction restraining members from playing the # 3 hole until it could be redesigned. In *Lin v. Hamptons Golf Course Ltd.*, 2017 ABCA 303, it was use of the 10th hole that needed to be enjoined until redesigned. In *Carley v. Willow*, the plaintiffs sought a permanent injunction to keep users of the driving range from driving balls over the 90-foot fence that had been installed to supposedly block errant shots.

Before that injunctive relief can be granted though the court needs to determine whether there has been negligence, a private nuisance or a trespass. Trespass is usually ruled out quickly as it concerns the occasional golfers themselves coming onto the plaintiffs’ property and, as belligerent as some golfers are these days (Google “fights on golf courses” for some eyebrow-raising battles), they are not the problem. It’s their balls. (Interestingly, the personal liability of an individual golfer for their errant shot has yet to be tested. Perhaps a good reason to never have a personalized ball.)

Courts have then turned to negligence. Does the course owe a duty to adjacent property owners? The judge in *Sammut* had no trouble deciding the club had such a duty once they became aware of the dangerous problem and then breached the duty by not addressing the situation. The club’s position seemed to be, “You built your home too close to the course. We have done our best by changing the direction of the tee box and planting some trees.” Not good enough, so said the judge.

With a claim of private nuisance the considerations are a little more nuanced. It concerns interference with an occupier’s interest in the beneficial use of his or her land. However, that use is considered in the context of the neighbours. So, it is not simply, are you using your land reasonably? It’s, are you using your land reasonably given your neighbours? The situation calls for a balancing of one owner’s right to do what he wants versus his neighbour’s right not to be interfered with. So local context is important.

Most judges — with one notable exception (foreshadowing?) — have little difficulty concluding that a private nuisance is occurring. Too many golf balls are raining down and if something isn’t done about it someone’s going to get injured. Once so found the court turns to the injunction which, if it is to be enforceable, needs to be specific. These injunctive orders have generally found that the particular hole on the course or the range in question cannot be used until the design issue has been remedied. In a few cases the enforcement of the order has been suspended to allow the course to look at options and implement a solution. Those options have included adjusting the tee box angle, planting trees, fences and nets, course redesign and, in the case of ranges, restricting clubs that may be used and supplying limited flight golf balls.

Now, I know many readers are left asking one important question: Sure, that’s all well and good, but what about Benny the Cat?

In a 2015 case that comes to us from Nova Scotia, we learn that Ann Norton’s yard backed onto the fairway of Dartmouth’s Brightwood Golf and Country Club. (A Don Ross design. Nice.) There was no doubt golf balls came into her yard from time to time. They had hit her house, her garage and her car. They had broken an ornamental gargoyle and damaged plants.

But that was not the worst of it. Brace yourself.

One day she had taken her cat, Benny, outside to sit in a chaise lounge. There she watched in horror as an errant golf ball struck Benny’s tail. He made a distressed sound and then stopped all forms of communication. He would not use his litter box, was diagnosed with hyperaesthesia syndrome, started tail chasing, sudden jumping and vocalization. Fortunately, there is a merciful God and medication and treatment solved Benny’s problems. He is doing fine.

However.

After a hearing that took several months, two lawyers, testimony from 17 witnesses that included two retired Nova Scotia Supreme Court Justices, the course hiring people on 12 occasions to monitor the hole in question, a site visit, extensive research about the course layout and expert evidence from a vet, Norton's claim for \$1,945.32 in vet bills was dismissed.

While the adjudicator accepted that Benny had been hurt and suffered emotional trauma, Norton had not established private nuisance to the satisfaction of the adjudicator. (Clearly not a cat person.) Case dismissed.

Alas, since errant golf balls will no doubt continue to be a part of the future of golf courses, driving ranges and their adjacent properties, perhaps we should add to the list of sounds caused by them something that is never a nuisance — the ringing of lawyers' phones.

This is part two of a series: Part one: Hosel rockets: Dispatches from the pettifogging lawyer.

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