

TREES AND NEIGHBOURS

Information and avenues for solution in the event of litigation between neighbours

Trees and their drawbacks

While trees are an integral part of the Rosemère landscape and have come to be emblematic of the town on the international stage, they can, at times, be a source of inconvenience or damage. In the case of trees on a neighbouring property, the situation can be more complex and delicate.

If your neighbour's trees threaten your property or cause serious and real damage (damages requiring repairs), you can initiate a process to rectify the situation. However, leaves falling on your side, even in significant quantities, cannot be considered serious damage, nor can shade over your pool. These are part of nature's normal cycle.

Remember that you will be required to prove what trees are involved. We suggest you keep all proof in a file folder (photos, invoices for repairs, etc.) in case legal procedures prove to be necessary.

Municipal By-laws

Municipal by-laws relating to dangerous trees are specific and may not apply to all cases. If a by-law applies, the appropriate authority (Public Works or Urban Planning) will initiate the required procedures against the guilty property owners. Municipal by-laws can apply in the case of:

- an ash tree showing a general decline of more than 30%.
- a tree that is completely dead.
- a tree deemed hazardous to public roadways (the street).





Owner of the tree involved

According to the Québec Civil Code, a tree owner cannot be negligent. In the event of litigation, he must demonstrate that he is not guilty of wrongdoing and that he has taken reasonable care of the trees he owns, i.e., trees whose trunks are located within or on his property lines.

The owner can be held responsible for predictable and avoidable damage caused by his trees. He must maintain his trees, i.e. conduct an occasional inspection of the state of his trees' health and structure and, when required, take whatever measures are needed to limit the risk of damage to his neighbours.

A neighbour can ask you to either prune or cut down certain trees. Unless you are required to do so further to a court order or a municipal by-law, you are not obliged to comply if you deem this request to be unreasonable. According to the Tree Protection Act (P-37), a third party cannot work on your trees without your authorization. Should he do so, you can submit a claim for damages and interest to the Québec Court, Small Claims Division (for amounts under \$15,000).

When planting trees on your property, we suggest that you avoid planting them too close to wires, underground pipes or fences. It is preferable to allow adequate space so that your neighbours will not be inconvenienced by your trees. While they may be small when you first plant them, take into account the size of the trees at maturity!

Neighbour of the tree involved

As a neighbour, **you cannot take justice into your own hands**, for example, by pruning trees without their owner's consent. Should you do so, your neighbour could ask you to reimburse him for damages you may have caused. You could also be liable for a punitive fine, as called for by the Tree Protection Act.

If a neighbour's tree is a serious hazard, for example, if a branch has damaged your roof, it may constitute an abnormal inconvenience in which case the following process is suggested:

- ☐ consider discussing the issue with your neighbour, to come up with an amicable solution (sharing of costs, etc.).
- ☐ use citizen mediation services, if both parties are willing to take part in this type of measure in order to come to an agreement.

If you have considered others conflict resolution measures and the situation has still not been resolved, you can issue a formal notice. Two options are available to you:

- 1) asking that a **Superior Court** judge issue an injunction requiring your neighbour to **carry out work** (and for this reason only). The **Québec Civil Code** can require that a tree be cut down almost exclusively in cases where **the tree threatens to fall on your property.**
- 2) asking that the **Québec Court**, Small Claims Division, order payment of **damages and interest (if the amount is under \$15,000).** It should be noted that the Québec Court will not issue an injunction requiring the work.

Trees located near property lines

Hedges and trees located between properties are a frequent cause of discord between neighbours. As a property owner, you must know your property's boundaries in order to know the trees for which you are responsible. Should you be unsure of your property lines, a land surveyor, hired at your expense, can clearly pinpoint the location of a tree.

If you wish to remove, prune or replace a tree or hedge located on the dividing line and of which you are not the sole owner, the following can help guide you in the process:

- Where are the trunks located with regards to the property line? You can use your location certificate or you can have a new one produced.
- Is the property line clearly defined?
- Who originally planted the tree or hedge?
- Who benefits from the hedge or tree (privacy, visual barrier, etc.)?
- Exactly what work do you plan to carry out (cutting down or planting a tree, installing a fence)?
- What is the approximate cost of your project?
- Is this work essential?

If the hedge or tree is located on the dividing line between two properties, it is common and both property owners are responsible for it.

On a municipal level, we ask that both neighbours be in agreement before issuing a permit to cut down any tree or hedge between two properties. To avoid conflict, it is necessary to obtain your neighbour's agreement and have him co-sign the permit application form.

Information and resources

- Rosemère Public Works:
T. 450 621-3500, ext. 3300
100 Charbonneau Street, Rosemère
travauxpublics@ville.rosemere.qc.ca
- Application form for an inspection or permit to cut down a tree: FREE
www.ville.rosemere.qc.ca/certificat-autorisation-coupe-arbres
- Lower Laurentians Citizen Mediation Service: www.mcb-l.ca
T. 450 437-9903
209 Grande-Côte, Boisbriand FREE
- **Consulting an attorney or notary**, at your expense, to help you through the process.
- Hiring **land surveyor** to accurately identify the boundaries of your property, and have it marked.
- The Éducaloi website to obtain additional information:
www.educaloi.qc.ca/capsules/les-arbres-et-les-clotures

