

TREES & THE LAW

BY JULIAN DUNSTER



Understanding tree-related laws under Quebec's Civil Code

In Quebec, the legal system dealing with private law is based on the latest version of Civil Code which enacted in 1994. In Quebec everything is referred back to the principles defined in the Civil Code. When dealing with trees and hedges there are specific sections of the code that come into play. In general, hedges, or a row of trees planted closely together that in effect form a hedge, are considered a form of fence.

If one person wished to fence in their land and does so with the fence located entirely on their land, they own the fence and are solely responsible for its maintenance and upkeep. But, if they place the fence on the boundary line they may be entitled to ask the neighbour to share in the cost of establishing and maintaining the fence.

When the fence, in the form of a hedge of a row of trees is solely on one side of the boundary line, it is owned exclusively by one owner. That means that the base of the trees, or the stems of the hedge are entirely located on one side of the boundary. That owner is solely responsible for the hedge and its maintenance. The owner can prune and maintain the entire hedge as long as she obtains consent to go onto the adjacent property first of all. The adjoining property owner cannot deny access if that is required for maintenance of the tree or hedge (the fence). If damage occurs as a result of the hedge owner using the access granted, they must pay reparation (damages).

If the far side of the hedge under sole ownership grows over the boundary and intrudes onto the neighbour's land, the neighbour (whether it be a private citizen, a municipality, or a highway authority) cannot cut it back without first asking for permission of the owner. A letter, termed the Demand Letter, has to be sent to the owner seeking permission to undertake the work. If the owner declines that permission, the neighbour has to apply to the court and seek an order that a) compels the owner to prune back the offending hedge parts or b) permits the neighbour to do so but only up to the boundary. Unlike the rest of Canada, Quebec does not allow the right of self help.

If the hedge or row of trees was planted on the boundary line both neighbours have equal rights to the fence which is jointly owned. They must share in its maintenance, and neither one can radically alter or remove all or part of the fence without the consent of the other. When one party wishes to retain the hedge in its present state, their wishes will typically take precedence over the wishes of the party who wants to alter the hedge in some way. Routine trimming to maintain the hedge does not seem to be an issue. But lack of maintenance clearly

causes problems as the hedge keeps growing outwards and upwards, and uses up space. Later on, the encroaching tree creates a loss of space, and may become a nuisance. If one party wants to cut the hedge back to regain the lost space, they cannot do that without the consent of the other party. And if the work would create a denuded hedge on one side, that lacks green foliage and loses its aesthetic appeal, the other party might refuse to grant consent. Again, there is no right of self help. The person wanting to prune back the hedge must apply to the court for permission. The legally acceptable process is for both parties to first establish and agree upon the boundaries between their lands, and then identify and agree upon which branches, roots, or parts or a hedge may or may not be cut. If agreement is not reached, one or both parties must seek the opinion of the court to resolve the issue.

Under Quebec's Civil Code, if the far side of the hedge under sole ownership grows over the boundary and intrudes onto the neighbour's land, the neighbour (whether it be a private citizen, a municipality, or a highway authority) cannot cut it back without first asking for permission of the owner.

When one party claims that the hedge or tree is creating a nuisance as a result of overhanging branches, or encroaching roots, they have to prove that the unwanted encroachment or branches or roots is causing more than mere inconvenience and is not trivial. It must be a serious and intolerable nuisance, and / or there must be proof of actionable damage that has already occurred, or will occur if no action is taken. By the same token, the owner of the trees (or hedges) has a responsibility to ensure that their trees do not cause abnormal annoyance to the neighbours. In other words, the rights of ownership have limits. The tree or hedge owner cannot force their neighbours to suffer abnormal or excessive annoyances. The court will compel pruning of branches and roots if the claim is substantiated.

Similar principles apply to trees growing on or close to the boundary line. There is no right to self help.



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Overhanging branches or encroaching roots cannot be pruned back without consent of the owner if the tree is beyond the boundary, and it is jointly owned if it on the boundary line. If the owner refuses, the applicant must apply to the court for an injunction compelling the work to take place. If a self help approach is adopted the court will automatically find fault and damages will automatically ensue.

If the applicant feels the neighbour's tree is going to fall onto their property, again they must first approach the owner and request that action be taken to prevent the damage. If no action is taken the applicant must apply to the court and prove that there is a serious danger that warrants the court compelling the owner to take action. The basic principle is that the tree owner is supposed to be aware of trees under their ownership, and take reasonable precautions to ensure that they do not injure people or damage property.

Issues of ownership are directly related to the location of the boundary line. As in the rest of Canada, accurate delineation of property boundaries is a contentious issue causing many problems. If there is doubt about where the boundary line lies on the property, as opposed to where it appears to be based on deeds, or plans, then there is responsibility to get the actual line properly surveyed and marked with stakes on the ground. If there is disagreement the court may reconcile the facts and determine which line is to be accepted and registered. The same process is used in the rest of Canada. Failure to check or reconcile the exact location of the boundary may lead to more expensive problems later on.

Julian Dunster is not a lawyer and the above should not be construed as legal advice. If you have an issue requiring legal advice please consult a lawyer. The above is extracted from his forthcoming book Trees and the Law in Canada which is scheduled for publication in 2018.

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