

Not in My Back Yard!

By Christine Mazur

Summer is that wonderful time of year when trees bloom and grow, waving their branches, dropping seeds, flowers, fruits and sap - into their neighbour's yards!

Throughout the summer, frustrated neighbours call lawyers for help with these types of situations: "My neighbour's tree is dripping sap in my yard and making it impossible for me to sit on my patio," or "my neighbour's tree branches are destroying my garage roof," or "my neighbour's tree's roots are growing into my house foundation!"

What can the upset neighbours do? What are their legal rights? What laws govern their actions when a tree sits on their neighbour's property but interferes with theirs?

There is no legislation that specifically says what a neighbour can do and there are no City of Winnipeg by-laws governing a neighbour's rights in these situations.

In common law, property owners have the right to use the space at a reasonable distance above and below the surface of their land.

Based on these common law rules, if branches are hanging on your side of the fence, you can trim them if they are occupying space that you use on your property. You cannot lean over the fence to your neighbour's side and cut the tree down, however, as you would be trespassing on your neighbour's property.

If your neighbour's roots are interfering with your house foundation and threatening to cause serious damage, you can cut those roots that are on your property, but you must be aware that if the tree dies as a result and falls on your neighbour's house and damages it, you as the cause of the tree's death and subsequent fall, could be held liable for the resulting damage to the house.

Before you go and cut up your neighbour's tree, however, you should try talking to your neighbour about your concerns. Often the first thing some people do is call a lawyer when they have never even told their neighbour that there is a problem. Neighbours can come to a peaceful solution if they talk to each other about their concerns and it would save them a lot of money that would otherwise be wasted on going to court.

If you find your neighbour difficult to talk to, the pamphlet try talking to the neighbour with the help of a neutral third party. Ask yourself some questions to help you to deal with the problem: consider how long the problem has been going on, does your neighbour know that you have a problem with their tree, have you already talked to them about it in the past and what was their response? What is their position on the matter and do they have any ideas to fix it? Sharing perspectives on the problem is a good way to come to a solution. Have a positive attitude, be respectful and calm when addressing your neighbour and don't get angry.

If you need help finding a neutral third party to help resolve conflict between you and your neighbour you can call Mediation Services at 204-925-3410.