

# Your Legal Rights



Disputes over trees and fences are a common cause of bad feeling between neighbours – trees that block your sun, roots that choke your drains, fences that your neighbours want built or replaced (often at considerable expense).

Your differences can usually be settled with a combination of tact and compromise, but if you are forced into a stand-off, legal action may be your only way out. This could cost you anywhere from hundreds to thousands of dollars and will most likely destroy neighbourly goodwill.

In this article we explain where you stand if a neighbour's trees are causing trouble.

## Trees



The Property Law Amendment Act 1975 says property owners are responsible for any nuisance or damage their trees cause to neighbours, even if the trees were planted before they bought the property.

Decide first whether the nuisance is worth the risk of souring relationships with your neighbour. You also need to decide whether the problem outweighs the benefits the trees give you both, such as beauty, privacy, shelter and shade

Try to work out a solution tactfully. Give neighbours time to think about what you are suggesting. They may be quite happy to help you with any work caused by their trees if it means saving them. It's better to talk over the fence than in court.

If you reach an impasse you may need to take legal action. If you do so, tell your neighbour – how would you feel if you received a court order in the name of your neighbour without warning? Your neighbour may co-operate if there is a legal obligation to do so.

If you go ahead with legal action, ask your lawyer to organise a Court Order. The District Court will take into account the matters outlined in Section 129C(6) and (11) of the Property Law Act 1975 in considering whether to send a Notice to your neighbour. The Court may order your neighbour to take action within a set time, or to appear in court.

## Roots

Q. The roots of a Willow tree on your neighbour's property continually block your drains. Twice in 18 months you have had to get a plumber to clear them. He warns you that this will be a regular exercise, and expense, unless the cause of the problem is completely removed. Even worse, it would eventually cost you new drains. You approach your neighbour about having the tree removed. He indignantly points out that the tree was well established on his property long before you bought the section next door, and he has no intention of removing his tree for you and your drains. Do you have any come-back?

A. Definitely. The law does accept that a tree planted 30 years ago cannot be a nuisance today. If all the facts in this situation were presented in Court, the neighbour would probably be ordered to remove the tree.

Q. Some roots of your neighbour's macrocarpa tree start pushing up your carefully manicured lawn. You ask your neighbour to do something about it, but she says there is nothing she can do. You then ask her to have the tree removed. She is not prepared to do that. You decide to solve the problem by poisoning the roots on your side of the fence. Unfortunately, the poison kills the tree and your neighbour threatens to take you to Court for damaging her property. Can she do this?

A. YES. You should have dug up and cut off the roots or taken Court action rather than use poison that would lead to the death of the tree. You are allowed to remove any part of a neighbour's property that intrudes into yours, but your right to take action stops at the boundary line between your property and your neighbours. Using poison

that would have an effect beyond your side of the boundary is illegal.

## Leaves

Q. A neighbour's Oak tree continually drops leaves in the guttering of your house forcing you to climb a ladder every few weeks to get the leaves out. Do you have to suffer this inconvenience?

A. If the branches causing the problem are growing over your side of the fence you are allowed to prune them back to the fence. If not, you can ask the neighbour to cut back the trees or remove them. If the neighbour disagrees, you could get a Court Order to solve the problem.

Q. A large Conifer growing on the other side of your back fence is obviously dying. You are concerned that at any time the tree, or part of it, could fall on your house. You ask your neighbour to do something about it. He tells you to mind your own business as the tree is doing no harm and, in his opinion, is unlikely to fall down on your house, but you are not convinced. Can you have the tree chopped down?

A. Ask your lawyer to apply for a Court Order to have the tree removed. If the Court agrees that the tree is likely to damage your house, the neighbour will have no choice but to cut it down.



## Branches

Q. You buy a section. There is a large Chestnut tree growing on the neighbouring property with branches growing over onto your side of the boundary fence. The law allows you to cut off the branches on your side, but they are long and thick making it a major operation. Is your neighbour obliged to do the work or pay for it to be done?

A. NO. Provided the branches are causing no real nuisance they are your responsibility if they are growing on your side of the fence.

- Q. You remove a large branch from a neighbour's plum tree that is growing over your property. This is quite legal, but unfortunately, the result of this amputation is that the neighbour's tree dies. Can your neighbour demand compensation?
- A. NO. You are within your rights to cut off the branch on your side of the boundary. It would be argued that any resulting damage to the tree was the neighbour's fault because he did not prune the branch when it was young and the life of the tree was less likely to be affected.

## Sunlight



- Q. Trees on a neighbour's property are blocking sunlight from your house and garden. Is this a good enough reason to insist they be cut back?
- A. YES. If neighbourly sweet reasoning fails then you can take legal action. You will have to convince a Court that the trees are having an adverse effect on your property and your enjoyment of it. If the Court agrees the neighbour will have to cut those trees back.
- Q. When you bought your home 10 years ago you had a great view from your lounge window, but now a line of trees has grown high enough to block your view completely. The trees are not on your immediate neighbour's property, but on a property further down the street. Can you do anything about having them cut back?
- A. You would have to approach your local City or District Council with your complaint. If the Council has a bylaw or a provision in its District Scheme, it may accept your argument and order the trees to be cut back. If not, you could take the case to Court, but this would be costly and you may not win.

## Fruits

- Q. Fruit trees growing on your property branch out over into your neighbours. The neighbour

picks all the fruit growing on her side of the fence. Can you do anything about it?

- A. YES. A neighbour must not take your property. Even if the branches are hanging well over your neighbour's section, the fruit on them still belongs to you. The neighbour could exercise her right to cut off the branches which are "intruding" on her property.

## Fence Damage

- Q. A Pine Tree growing on your neighbour's side of the fence has grown so large that its trunk is now pushing the fence over onto your property. As far as you are concerned, this has already made it impossible to plant anything on your side of the fence near the tree in case the fence topples over. You complain to your neighbour but get no joy. The neighbour says the tree is on his property and, apart from any branches that might grow out over the side; it is none of your business. Is he right?
- A. NO. The law is on your side in a dispute involving a plant or construction on a neighbour's property which is damaging yours. The cost and upkeep of a boundary fence is normally halved between you and your neighbour, but in this case he is liable for the damage and must repair the fence or compensate you for this damage.

However, the law goes further than this and says that if something is a continuing nuisance (and of course this tree will simply go on growing and pushing the fence over), then the cause of the continuing nuisance must be removed. In this case, the neighbour could find he has to lose his tree.

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