

Unifor Legal Services Plan

Dealing With Neighbours

Most people are good neighbours and live among good neighbours. But irritants between neighbours can arise. Sometimes the irritants can be worked out; sometimes they cannot.

Neighbours can assert certain rights against each other, but they also have to accept certain duties and limitations on their freedom of action.

At Unifor Legal Services Plan we have seen neighbours involved in disputes about things such as:

1. location and condition of fences;
2. overhanging tree branches;
3. water drainage;
4. noise and other matters emanating from one property to another.

FENCES

Firstly, whoever is erecting the fence has to ensure it will be placed in the right location. Before any work is commenced you should consult with your neighbours and review surveys with them to determine the exact location of the lot line(s). You should also work out a cost-sharing arrangement, if possible. If you cannot work out a cost-sharing arrangement most towns and cities have enacted fence cost by-laws. They usually require the “non-agreeable” neighbour to pay for one-half of the cost of erecting a 4 foot high chain link fence on the shared lot line. But we warn, this provision may not be applicable in every municipality. If you do have concerns about location of the fence and the cost sharing arrangements you should seek some legal advice from our staff lawyers or any other lawyer of your choice.

OVERHANGING TREE BRANCHES

The basic law is that you may trim any tree branches that overhang over the property line and into your property. But, we warn, there are limits to your rights to trim. The trimming should be as minimal as possible and should not endanger the health and stability of the tree affected. So please, do not start trimming away out of frustration or anger. We suggest you consult with the neighbour about your concerns. If that is not possible or practical you should consult with a lawyer before the trimming begins. (Side issue: landowners do not have a right to a view, so you cannot compel your neighbour to trim a tree to improve your view of the lake, park, street etc).

WATER DRAINAGE

Most municipalities have approved drainage and grading plans for various areas and sub-divisions in their territory. We do caution that in older areas the municipality may not be in a position to enforce those plans. Enforcement by the municipality in a new sub-division is more likely. The general rule is that a land owner cannot alter their grading and drainage to cause a substantial increase of water to flow from their property onto their neighbour's property. If the municipality will not enforce its plan, the owner of the lands receiving the extra water can bring an action against the owner of the lands from which the water is emanating. The extra water flowing onto the affected land, if sufficiently substantial, can be considered a nuisance. There are many cases on nuisance. Your lawyer can help you determine if a particular set of facts establishes a nuisance claim

NOISE, ODOURS ETC.

Like water flowing, any substantial noises, odours, etc. emanating from one property onto another can be a nuisance. Again we caution it has to be substantial and would also have to be repeated; a one-off noisy party will not be considered an actionable nuisance

WARNING - CALL THE PLAN - SEE A LAWYER FIRST

Here is a legal maxim to remember and consider before getting too financially and emotionally involved in a "neighbour dispute" :

"De minimis non curat lex" - "The law does not concern itself with trivial matters".

If an issue substantially interferes with the enjoyment of your property you may commence a legal action. But you will have to establish that

1. The issue constitutes a substantial interference, and
2. It is being caused by your neighbour, or emanates from your neighbour's property.

So, prior to taking any self-help remedies or steps that may affect your neighbour, you should make use of your legal plan and obtain some advice.