

## TREES THAT DISTURB

You live in the suburbs. The trees located on your neighbour's land are a major disturbance to you. Can you ask a court to order that they be cut down? Under what circumstances can the court issue such an order?

### THE FACTS

The plaintiffs lived in the suburbs. On the land adjacent to theirs, there were three cottonwoods, two of which had multiple trunks. They asked that these trees, which were a major annoyance to them, be cut down. First, they claimed that, at certain times of the year, the trees attracted many birds which were very disruptive as a result of their squawking and the droppings they left on the various items located in the plaintiffs' backyard. Furthermore, they complained that, during the flowering period, the trees gave off cottony fluff that fell in large quantities onto their property. They claimed that this fluff caused a significant mess which they had to pick up and that they were constantly required to clean their property during this period. Finally, they argued that they were bothered by the shade projected onto their land by the three trees. The owner of the three trees stated that they were magnificent trees that increased the value of his property. Furthermore, he stated that he was not disturbed by the presence of the birds or by the cottony fluff, and that, in fact, he appreciated the shade provided by the trees on very hot and sunny days. Indeed, the presence of the trees had contributed to his decision to purchase the property in 1992. He was of the opinion that this is the price one has to pay in order to enjoy the natural surroundings that make urban life more pleasant and healthy.

### THE ISSUE IN DISPUTE

Should the court have ordered the three cottonwoods to be cut down?

### THE JUDGMENT

The judge dismissed the motion. The trees were not ordered to be cut down.

### THE REASONS

According to an expert report, the three cottonwoods in question caused a sufficiently significant inconvenience to justify their felling. Furthermore, the report stated that cottonwoods are part of the species of trees that are not recommended for planting in urban settings, due to the damage that can result from their root systems. The judge did not share this conclusion. He indicated that no problem had been raised with respect to the roots. The roots were at a sufficient distance from the homes so as not to cause damage to the foundations. According to the judge, the reasons mentioned by the plaintiffs were not sufficient to justify cutting down the three magnificent trees. The inconveniences suffered by the plaintiffs were natural phenomena that fell within the limits of tolerance that must exist between neighbours. He therefore dismissed the application for an order to cut down the three cottonwoods.

### References

*Lapointe v. Degrosbois*, Superior Court (C.S.) Joliette 705-17-000606-036, 2004/11/11, Judge: Jean Guibault (J.E. 2005-125; available on the Internet at the following address: [www.jugements.qc.ca](http://www.jugements.qc.ca))

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The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult an attorney.

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