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Weed-like tree at root of neighbours' quarrel

Shared tree damages one yard

Owner faces suit for trimming it

In the back yard of her Toronto home, Elizabeth Bakos has a tree known as a Tree-of-Heaven, or *ailanthus altissima*. It appears that the trunk of this particular tree sits partly on her property and partly on that of her neighbour.

Bakos said in a recent email that during a bad windstorm last November, winds reaching 91 km/hr. damaged the tree. Several limbs fell to the ground and broke her fence, TV cable line, clothes line and several fruit trees.

In cleaning up the mess in her back yard, Bakos decided to trim back the heavy branches that were overhanging her property. She recruited a neighbour (not the adjacent owner) to bring along his saw and ladder and cut the branches overhanging the Bakos yard.

She says that when the job was done, the tree appeared to be dangerously unbalanced. The branches on the adjoining neighbour's side were heavy and it seemed the tree might topple over. Not wanting to leave the tree in a dangerous condition, Bakos says they trimmed the branches on that side as well.

After the surgery, the 20-foot tree was an eight-foot stump. Since this particular type of tree grows like a weed, it now has many clusters of new branches, some reaching as long as five to six feet in only nine months.

Following the cutting last November, they sued Bakos in Small Claims Court claiming \$10,000 for damages to the tree and trespassing. They say that the tree trunk is entirely on their property.

The case has now gone through two unsuccessful pre-trial mediations, and will soon come up for trial.

In her email to me, Bakos asked what the rules are for cutting overhanging tree branches.

In a series of decisions over the years, Canadian courts have said that a landowner has the right to trim a neighbour's overhanging tree branches back to the property line. It is not acceptable, however, to trespass on the neighbour's property and cut back any branches on the other side of the property line.

On its website, the City of Toronto tells homeowners that they can't trespass onto neighbouring property or damage trees next door, but they do have a right to maintain their own property in a safe condition. It advises homeowners to agree between themselves with respect to trees overhanging property lines.

In the Bakos case, the exact location of the property line is uncertain, and a site visit by a licensed land surveyor may be necessary to determine exactly who owns the tree trunk, or in what proportions the neighbours share ownership.

The Bakos tree is the type featured in Betty Smith's novel "A Tree Grows in Brooklyn." It also grows everywhere else, and is difficult to eradicate. Often described as a noxious weed or agricultural pest, the Tree-of-Heaven emits a powerful toxin and has the ability to crowd out other vegetation. Its root system is aggressive enough to cause damage to sewers and building foundations.

If and when the Bakos case goes to trial, the judge will have a number of issues to determine.

*Where is the property line?

*Whose tree was it?

*Was there a trespass onto the neighbour's property?

*Are damages appropriate if ownership was shared or if there was a trespass?

*Are damages appropriate for removing tree branches from a tree that arborists call an agricultural pest?

*If the tree belongs in part to the neighbours, who is responsible for last November's windstorm damage when the branches fell into the Bakos yard?

Stay tuned for updates.

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