

Trees & the Law

BY JULIAN DUNSTER



WHO OWNS THAT TREE?

Ownership of trees on a common boundary is not always clear to the average homeowner, but the law has some definitions which may help keep arborists out of trouble.

Tree disputes between neighbours are common and often expensive. In many cases the issues focus on who owns the tree, who is responsible for its maintenance, and what can or cannot be done to it. There are some basic legal principles that all tree owners should understand.

Who is responsible for the tree?

Ownership of one or more trees introduces the term, Duty of Care. That is, the owner has some duty to be responsible for the tree(s) and ensure it is reasonably safe and not likely to cause damage to a neighbouring property, or to people who may be on the owner's property. In order to determine if the owner has acted reasonably, the courts compare actions to what is known as the Standard of Care. This is the level of knowledge and skill that would be expected in the same or similar circumstances. For an ISA certified arborist, that standard would be a solid knowledge of, and experience with, risk assessment of trees (Certified Tree Risk Assessor in British Columbia). For the homeowner, it would be some recognition that they should perhaps seek advice. For municipal land owners, meeting the Standard of Care is a part of Due Diligence and should be entrenched in their policy and procedures.

Generally, a private homeowner, who is less likely to know much about trees, will not be expected to recognise problems, as easily as a municipality. The latter has the capability to retain expert help. In either case the degree of skill required to fulfill the Duty of Care is measured against the Standard of Care.

Trespass

Trespass is a very common cause of disputes. In most parts of Canada, the location of the tree is critical. Imagine two parcels of land A, and B. If the entire tree trunk at the point where it meets the ground, is entirely on one side of the property line, say on Parcel A, then it is owned entirely by Parcel A. If the base of the tree straddles the property line, then it

becomes a tree in joint ownership, and any actions planned for the tree should be undertaken with mutual agreement from both owners.

In principle, any roots or branches that cross the property line from Parcel A onto Parcel B, are trespassing, and in principle, under English common law, the owner of Parcel B is entitled to prune back the roots and branches, but only to the property line. If they were pruned back beyond the property line, then the pruner would be trespassing onto Parcel A. One common cause of trespass is to assume that the fence line accurately reflects the property line. That is seldom the case, so before pruning be sure to check the exact location of the property line.

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What happens, if the act of pruning back the roots causes the tree to become unstable? Or, if removal of all the branches on one side leads to death of the tree? Well, it's a grey area of the law, although the exact legal implications may vary across Canada. If, in the process of exercising your entitlement to remove roots and branches, you cause damage to someone else, are you creating another problem?

Of course, it should be obvious, that pruning or cutting down trees on a neighbour's property is trespass. Sadly, the numbers of trespass cases show that many people feel asking for forgiveness is simpler than asking for permission. In these cases, the court judgement will often be a large monetary award against the trespasser, and may involve significant punitive damages as well. That being said, fighting for a principle can be very expensive.

In order to avoid these problems, get a proper legal survey undertaken first of all, and make sure it accurately shows the property boundaries and the centre of the tree trunk at ground level.



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Dr. Dunster is not a lawyer and the above notes only provide general guidance. If you have a tree issue, contact your lawyer for legal advice that will be specific to your situation.

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