

# Trees & the Law

BY JULIAN DUNSTER



## The Master Servant Relationship

UNDERSTANDING THIS KEY LEGAL CONCEPT CAN SAVE BUSINESSES TIME AND MONEY

In the last issue of *Tree Service Canada* we looked at ownership issues regarding trees on or straddling property boundaries. Continuing with the trespass issue, it is important to understand the Master/Servant relationship when hiring contractors to undertake your work.

As the person hiring and paying the contractor, you assume the role as the Master, that is, the person in charge. If you direct the contractor (the Servant) to remove those trees along my property line and you did not check if in fact you owned them, then in the event of trespass, you would most likely be liable for the damage, not the contractor. If however, the contractor

consulting with the tree owner, and ask if they would mind if you prune back some of their branches. If they agree, put the agreement in writing—even a simple letter will help if there is trouble down the road. If they don't want the branches pruned back beyond the property line, then be sure you know exactly where the line is and do not prune beyond it.

Wilful trespass occurs when one or more people knowingly prune or remove trees on property that they do not own. Creation of views, or more sunlight, are common reasons offered for undertaking such work. However, if you don't own the trees, and the branches are not over your property, then they are not yours



If only all property boundaries were marked so well! The rules: establish boundaries first before beginning tree work and don't trust fences to follow legal boundaries.

decided, without asking you, to remove trees, and did so without checking ownership, then the contractor is most likely liable. In many cases both owner and contractor can be jointly liable if they both fail to take reasonable steps to check ownership, and fail to issue explicit directions, or fail to properly understand the directions given.

In general, contractors should always ask the person hiring them if in fact they own the trees, or have permission to undertake work on them. It is best to have the question and response in writing to avoid future problems.

Trespass can take several forms, although all involve doing something to someone else's tree without their permission. Technical trespass occurs when, for example, pruning occurs that goes past the property line. You may well be entitled to prune back overhanging branches or roots to the property line (a vertical projection upwards or downwards). At the time it may seem more reasonable to not leave small stubs, and try to undertake correct branch pruning. But then you may be trespassing. While it may not be really big issue, it is still a trespass. Avoid it by

to prune or remove. You can ask permission but if it is not given then you cannot legally proceed. In this type of trespass, the courts are much more likely to render a judgement that not only places a monetary value on the lost or damaged trees, but also assigns an additional penalty for wilfully acting without regard to other people's property rights. It can be a very expensive outcome!

Whenever you want to work close to a property line, be sure to get the boundary correctly established. Do not rely on the fenceline which is often in the wrong place. Get any agreements in writing. Be sure they are detailed enough to easily follow, and make sure any contractors have a copy, and that they follow them.

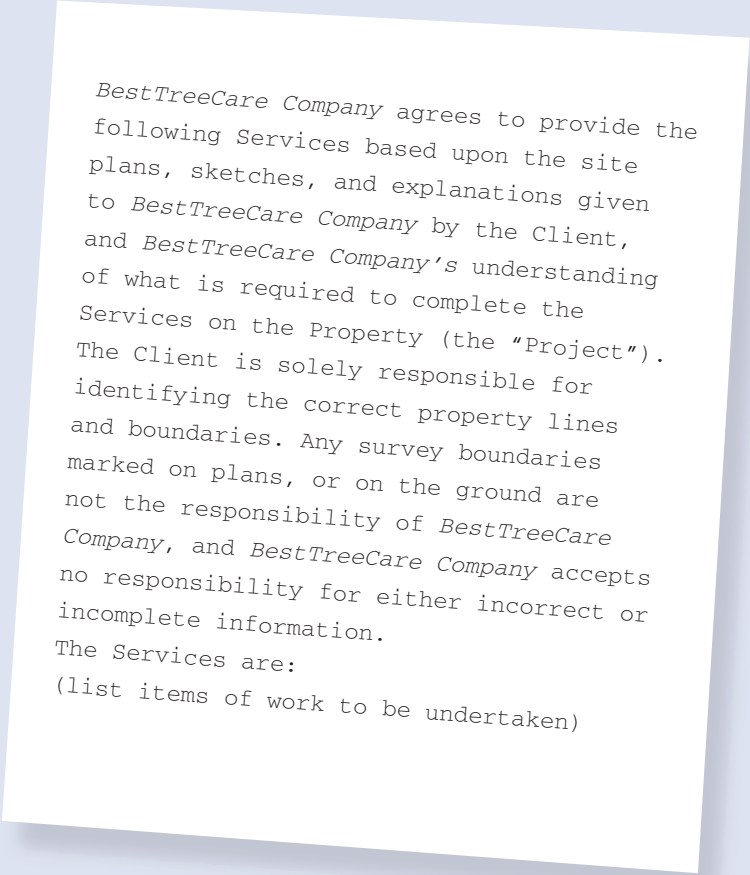
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Dr. Dunster is not a lawyer and the above notes only provide general guidance. If you have a tree issue, contact your lawyer for legal advice that will be specific to your situation.

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### An Ounce of Prevention

A LETTER, LIKE THE SAMPLE BELOW, BETWEEN CLIENT AND CUSTOMER HELPS CLARIFY RESPONSIBILITY IN THE EVENT OF A TRESPASS.



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