

Trees and the Law

The recent ice storm in the Toronto area resulted in much damage, often caused by falling trees or branches. Following find an introduction to legal issues concerning trees in urban areas:

What Law applies to Trees?

Trees are subject to the common law concerning property and nuisance as interpreted by court decisions and modified by provincial statutes such as the Forestry Act and municipal by-laws such as Toronto's Tree By-law.

Who Owns the Tree?

The majority of the trees in the Toronto Region are privately owned. A recent case held that if any part of the trunk, even below grade, straddles 2 properties, the tree is owned by both parties. In the City of Toronto, about 40% of all trees are publically owned, located in parks and along road allowances.

Is a Private Owner liable for tree damage to a Neighbour?

Private owners are generally not liable for damages to neighbouring properties resulting from storm damage to their trees, as long as they had no reason to believe that their trees were healthy and not dying or diseased. "A property owner cannot be held responsible for damage resulting from a limb or tree falling simply on the basis that the limb or tree fell". However, courts have found private owners liable if they were warned by their neighbours about the unhealthy state of their trees.

Damage from Encroaching Tree Roots

Courts have sometimes awarded damages resulting from the effects of encroaching tree roots on walls and

driveways. However, in a recent Ottawa case, the court noted the environmental benefits of trees as indicated by municipal tree by-laws, and did not find liability for damage to a swimming pool without the neighbour providing further evidence of the practicality of installing a root barrier and lack of foreseeability of damage.

Is a Public Agency Liable?

Municipalities or hydro distributors have generally not been liable where there were no visible signs of decay, or the public agency inspected trees regularly. Courts have held a municipality to a lower standard than a private owner, since it was responsible for the inspection of many more trees than a private owner. However, municipalities have been found responsible where there were numerous indicators that the tree was unhealthy, or its diseased state could have been discovered by a proper inspection.

Will Insurance pay for Damage caused by Trees?

Physical damage to homes or land caused by trees is sometimes covered by home insurance policies, subject to deductible clauses. Damage to vehicles caused by falling trees may be covered by auto insurance if the vehicle owner has purchased comprehensive or all-perils coverage. The cost of cleaning up and removing a fallen tree or limbs, or the cost of alternate accommodation will not be covered by most policies. However, municipal councils may be prepared to assist some homeowners with removal costs following the storm.

Ron has more than 20 years of experience helping applicants get development approvals.

This Municipal Law Update contains general commentary but not legal advice.

If you have questions or want legal advice concerning specific facts, please contact Ron at: rkanter@msmlaw.ca or 416.361.2619.

