

TREES AND THE LAW

THE PRESENT LAW (COMMON LAW)

Statutes passed by parliament or the legislatures to protect the public interest, do NOT primarily govern the resolution of private disputes, BUT by common law principles developed by the courts themselves.

Squabbles by neighbours over backyard trees are governed generally, for example, by the common law doctrines of "nuisance and negligence".

The doctrine of nuisance is that no person may use his land in a way that unreasonably interferes with his neighbour's use and enjoyment of his property. As a result...the landowner whose trees extend their roots into his neighbour's water line, or against his neighbour's pool or basement walls may be responsible for the damage. *He may even be held responsible for the cost of clean-up if the leaves from his tree blow into his neighbour's swimming pool and thereby damage the filter or cleansing system...depending on his awareness of the problem.*

The doctrine of negligence is that everyone has a duty to avoid any foreseeable injury to others, who might be expected to be affected by his acts; or omissions. For example...if a young and apparently healthy tree blows over onto a parked car as a result of a heavy wind, the owner of the tree would not necessarily be responsible. **HOWEVER**, if the tree was old and by visual inspection or with the help of expert advice, the owner could have expected it to topple over, he will be liable for the damage.

There has been extensive amendment to "The Trees Act" which was passed in 1979. Penalties for cutting down trees (wrongly) were raised from \$500.00 to \$5,000.00. The penalty for cutting down a tree on a borderline between two properties without the consent of both owners was raised from \$100.00 to \$1,000.00.

An innovative provision was passed giving courts the power, not only to fine the offender, but to order him to replant the trees he had cut down.