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Tree troubles ©

Saturday morning, everyone is asleep. As you lay in bed contemplating your two morning papers, the sound of birds chirping is interrupted by the roar of chainsaws. The smell of gas wafts through your open window. Quickly you run outside in your pajamas to investigate, only to be greeted by your new neighbours with a "Good morning and pleased to meet you, my name is Ed, and this is my Brother Fred".

Ed and Fred both grimace as they shut off their chainsaw. They explain that they did not mean to wake you up, but the tree that is between the houses interferes with their new patio. You promptly inform them that the tree is yours. In the interest of good relations you both agree to stop work until the issue of tree ownership is resolved. Now what? You both have a 1923 survey that is barely legible and you are unable to establish a boundary with it. What is the next step in determining whether your neighbour can legally chop the tree down, and what rights do you have in this situation?

The *Private Tree By-law* prohibits the removal of trees on private property if they are 30cm or greater in diameter when measured at a height of 1.4 metres above ground level. If you wrap a measuring tape around a tree at about chest level and it measures 94 cm or more, your neighbour would have to apply to the City of Toronto for a permit to cut the tree down, otherwise, a fine of \$1,000.00 per tree would be issued.

A permit application could be made by either neighbour, regardless of ownership of the tree, but it is unlikely that the permit will be issued just because it interferes with a new patio. If a tree is healthy, sound and is not a hazard, the City will most likely refuse to issue a permit for tree removal. If your neighbour goes ahead and applies for a permit, it would be prudent to call an

arbourist to get a report on the condition of the tree in question and the protection measures to be implemented.

In the event that the measurements of the tree place it below the guidelines set by the *Private Tree By-law*, the permit requirement no longer applies and it then becomes a civil matter between you and your neighbour. A survey of the two properties will determine who can assert their rights over the tree.

You both agree to split the cost of a new survey which reveals that the tree grows on your side of the property. However, what if the tree trunk is on your side but above the ground it happens to twist and lean onto your neighbour's side, in addition to many of the adjoining branches? Ed and Fred could argue these points in civil court to retain the right to cut the tree down, but the Forestry Act determines tree ownership based on where the trunk of the tree grows. If the tree trunk falls right on the property line the Forestry Act does not permit the tree to be cut without the consent of the other property owner.

However, as with any disagreement with neighbours, it is always better to arrive at a compromise between yourselves than to take matters to court. Perhaps those overhanging branches could use a bit of trimming after all.

For more information about this or any other real estate law related topics please do not hesitate to contact John Poletes at 416-482-1902, or e-mail him @ jpoletes@sympatico.ca