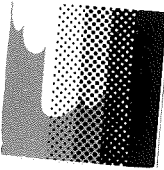


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**Environmental  
Law  
Association**

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CURRENT ONTARIO LEGISLATION AND TREES

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AN ADDRESS TO THE  
PUBLIC FORUM AT HUMBER COLLEGE OF APPLIED ARTS AND  
TECHNOLOGY, ENTITLED "TREES IN THE CITY"

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Southern Ontario is in danger of being largely denuded of trees. The danger is not immediate, but the long-term trends are alarming. Among the culprits in the cities are disease and development.

In addition, the yellow birch and the maple are falling victim to logging, but because we are concerned today mainly with trees in the city, I do not intend to deal with the legislation, mainly a series of Acts administered by the Ontario Ministry of Natural Resources, which regulates logging.

Ontario legislation relating to trees can be characterized by two sweeping statements. First, there is little in it making the preservation of trees and greenspace a priority. While there is an abundance of legislation aimed at punishing the person who defaces individual trees, there is little duty imposed on developers, either private or public, to conserve trees and greenspace or to account for them in their planning procedures.

Secondly, the legislation gives a broad discretion to a wide variety of public bodies to cut down trees and destroy greenspace for their own purposes with little accountability to the public.

#### THE LEGISLATIVE SCHEME

The preservation and maintenance of trees growing on lawns and boulevards and along city streets and country roads is a major area of concern. It is governed mainly by the Trees Act, the Municipal Act, and a series of statutes giving expropriating authorities the right to cut down trees.

#### I THE TREES ACT

Sections 2 and 3 of the Trees Act deal with trees growing on the boundary

lines between two properties. One landowner may plant trees on the boundary with the other's consent and the trees will belong to both of them. Anyone who injures or cuts down one of these trees is committing an offence and is liable to a fine. The value the Ontario legislature places on trees is apparent from the size of this fine - a maximum of \$25.00.

The next two sections of the Act deal with the conservation of trees. Section 4 authorizes the councils of counties, municipalities, "separated" municipalities, and municipalities in territorial districts to pass by-laws restricting and regulating the destruction of trees. The local authorities may appoint officers to enforce these by-laws. The penalty for breaking a local tree protection by-law is a fine of up to \$500.00 or imprisonment for up to 3 months.

However, the Act is rendered virtually useless for the average citizen, since it only protects trees on a woodlot of more than two acres. Trees growing on a woodlot under two acres, on a road allowance, or on any highway (in the statutes discussed here "highway" means any road, including city streets) may be destroyed regardless of any tree protection by-law which the local authorities may pass.

In addition, just about every person or government agency likely to destroy trees is exempted from any tree protection by-law. Section 5 names the following:

Ontario Hydro may cut down trees.

Municipalities may cut down trees to accomplish anything they are authorized to do under the Municipal Act - that is, anything to do with running a municipality.

A person who is a registered owner of land for two years may cut

down the trees on it for his own use.

Further, an important exception is not spelled out in the Trees Act: just about every government body with a power of expropriation is in fact exempted from any by-law to protect trees.

## II WHO CAN CUT DOWN TREES

The Public Utilities Act gives municipal corporations broad powers to expropriate lands to build water works, artificial or natural gas works, electrical power dams and plants, and works for producing steam and other forms of energy and hot water.

The Public Works Act allows the provincial government to expropriate lands to build highways, bridges, harbours, wharves and other public works, or for any other purposes of any government department (s. 13).

It appears that the government might also have the power to cut down trees on privately owned lands under section 12 to build or maintain or gain better access to a public work.

The Public Transportation and Highway Improvement Act authorizes a road superintendent to make an agreement with a landowner to remove trees and shrubs on his land which might interfere with the road in any way. This agreement provides for the amount of compensation to be paid the landowner for his loss.

If the road superintendent is of the opinion that the trees or shrubs will cause the drifting or accumulation of snow or obstruct the vision of

pedestrians or drivers or otherwise interfere with the road, he may apply to a county court judge for permission to enter the land and remove the offending trees or shrubs if he and the landowner cannot reach an agreement for compensation. The judge will give the landowner notice of the application and will fix the amount of compensation after hearing both parties.

The Transportation Minister may order any tree or shrub removed which is within 150 feet of any controlled access highway or within 1300 feet of the centre point of any intersection. The Minister must provide compensation for the loss. If the Ministry and the landowner cannot agree on the amount of compensation, the landowner may appeal to the Land Compensation Board, and from there to the Court of Appeal with leave.

Municipalities may expropriate to widen roads and the Minister may expropriate to build highways.

Section 33 of the Power Commission Act gives Ontario Hydro the right to enter on privately owned land on either side of a right of way for hydro lines or works and cut down any trees or branches that the Commission feels it is necessary to remove. If this amounts to an expropriation or injurious affection, the Land Compensation Board will determine the amount of compensation if the parties can't agree.

### III THE LAND COMPENSATION BOARD

The Land Compensation Board, which now has sole jurisdiction to determine

compensation by arbitration in all expropriations under any provincial statute, is one of the few bright spots in our legal regulation of trees.

The Board set a valuable precedent in 1972 in an arbitration between the County of Wentworth and a Mr. and Mrs. Andela (File #A71122). The County had expropriated a strip of land from the front lawn of this couple's home for a road widening. The strip contained two 65 year old white spruce trees.

The County offered to replace the trees with two 4 foot saplings at \$50.00 each. The couple refused this offer.

In awarding \$500.00 for each tree the Board stated that a 65 year old spruce tree is a valuable asset on residential ground and its replacement cost would be substantial. The Board stated that such a fact is one which may be judicially noticed and is "generally recognized information" under section 16 of the Statutory Powers Procedure Act. In other words, the value of mature trees on residential property is so obvious that it needs no proof.

#### IV THE MUNICIPAL ACT

The most important section of the Municipal Act in regard to trees is section 457. This section authorizes municipal councils to pass by-laws authorizing the planting of shade or ornamental trees on any highway, granting money for this purpose, by-laws for preserving trees, for preventing their injury or destruction, and to prohibit adjoining landowners from planting trees along the road side which the council

considers unsuitable. By-laws may be passed to enable the municipality to trim trees along a highway, or on private lands if the branches extend over a highway, and to remove decayed or dangerous trees, or any tree the council wants removed from along a highway. The council may pass by-laws prohibiting the attaching of any object or animal to a tree. City of Toronto by-law 319-69 is an example: "No person shall attach any object or thing to a tree located on a city street except with the consent of the (Parks) Commissioner."

Under section 451 of the Act, municipalities may remove trees or branches which obstruct the view of drivers.

The penalty for injuring any tree along a highway is a fine of up to \$25.00.

Section 7 of Toronto by-law 319-69 shows the broad power municipalities have under the Act to cut down trees in front of your home; this section provides that:

The Commissioner is hereby authorized to trim, transplant, cut down or remove...any trees planted or growing in any city street or square of the corporation, without notice to the owner or occupant of the adjoining property and without payment of compensation therefor. (emphasis added).

#### THE DEFECTS IN THIS LEGISLATIVE SCHEME

This scheme has proven largely ineffective to preserve and protect trees in Ontario, particularly in our major urban centres.

1. The Acts give municipalities and expropriating authorities broad discretion to destroy trees, with no corresponding duty to plant, replant, or relocate. They have no duty to carry out disease prevention

programs or to treat diseased trees rather than destroy them.

2. The Trees Act and the Municipal Act apply a hit-and-miss approach to conserving trees. While municipalities are empowered to pass tree-protection by-laws, they have no duty to pass such by-laws or to enforce the ones they have. A concerned municipality may pass excellent by-laws and enforce them diligently. Others may not.

Municipalities were also once charged with responsibility for air and noise pollution, and sewage treatment plants. The provincial government, over the past few years, has been taking over all these areas.

But the hit-or-miss approach taken by municipalities to tree conservation has also been the provincial government's traditional method of dealing with environmental concerns. It has proved unsuccessful in controlling air and noise pollution, and in the provision of non-polluting sewage treatment plants. Can trees hope for better?

Provincial take-over of tree legislation is, in itself, no guarantee of better tree protection. Administration by the Ministry of the Environment might result in conservation of trees. The Ministry of Natural Resources, on the other hand, is charged both with protecting natural resources and with licencing the industries which exploit natural resources. Its concern with preserving trees is demonstrated by the extensive logging it allows in Quetico and Algonquin Parks.

Nothing will be gained by provincial administration of tree conservation unless the government is prepared to recognize trees, parks, and the environment in general as an important priority.



One solution would be the addition of meaningful tree protection by-laws to the Trees Act and Municipal Act. These by-laws would be deemed in force in every municipality and each municipality would be given a duty to enforce them.

3. The numerous exemptions in the Trees Act make it almost useless. Alderman Kilbourn of Toronto is presently asking that city's council to request the provincial government to amend the Trees Act by striking out Section 5(e), which forbids municipal interference with owners cutting trees on lots smaller than two acres, and by amending other portions of the Act in a manner that will enable municipalities to pass by-laws limiting the rights of owners to cut or kill large healthy trees over 20 years old without permission from the municipality, or without such due cause as danger to persons, homes or other trees.

4. A municipality's tree protection powers under the Municipal Act are largely limited to trees on city streets and other public lands. Cities have little power to stop private developers and other landowners from destroying the trees on their own property.

#### DISEASE AND OLD AGE

A further concern is the lack of protection for diseased or decaying trees. We have legal duties to take good care of sick people and old people. We even have some duty towards animals. But there appears to be no duty placed on either public bodies or private individuals to treat rather than destroy sick or old trees.

There is some evidence that the Elm could have been saved if our priorities

had included an intensive treatment campaign. But the Municipal Act, which gives municipalities a power to remove decayed or dangerous trees, imposes no duty to treat them.

The Plant Diseases Act provides that an inspector who finds a plant disease may order the owner or the person in charge of the premises to disinfect the plants, (including trees), to treat them, or to destroy them. This is a very broad power and it gives no guarantee that an infected tree will be treated where possible, rather than destroyed.

One Toronto citizen recently refused to believe the city inspector who told him the maple tree shading his house had to be cut down because it was dying. He called a tree doctor of his own who said the 70 year old tree could be saved. Then he called the Toronto Parks Committee who recommended that the City spend \$275.00 trying to save it.

Until legislation is passed to save diseased trees, or mature trees which fall victim to rot or to "progress" in the form of development, the best approach is still to rally neighbours and call the press and sympathetic government officials and elected representatives.

#### PARKS AND GREENSPACE

Finally, legislation is needed to protect parkland, and, consequently, trees. At the Canadian Environmental Law Association we have found that parkland is particularly vulnerable to destruction by provincial and municipal governments, and sometimes by the very authorities dedicated to preserving it.

In Oshawa, a hospital is building a multi-storey parking lot on greenspace against the protests of the neighbourhood; Metro Toronto seeks to destroy the Cedar Vale and Nordheimer ravines for a subway. The Scarborough Expressway is to be built through a ravine, as was the Don Valley Expressway. The police are placing a communications tower in Churchill Park against the people's wishes; in Elora, Ontario, the Grand Valley Conservation Authority appears willing, if not eager, to destroy stands of cedar to build a bridge over the most scenic part of an historic gorge which forms the heart of its Conservation Area.

Little of the legislation governing parkland and recreational areas imposes a duty on government to protect it against development. The authorities are given wide powers to give away or misuse parkland, and the citizen has no legal right to challenge the abuses in court. Nor is there any requirement for studies of the environmental impact of developments in and around parks before they are approved.

The main laws governing parks are the National Parks Act, the Provincial Parks Act, the Wilderness Areas Act, the Conservation Authorities Act and the Public Parks Act.

There is some protection for trees against vandalism in each of these Acts. Section 19(1)(e) of the Public Parks Act, for example, provides that "no person shall wilfully or maliciously injure, hurt, deface, tear or destroy any ornamental or shade tree or shrub or plant". The penalty, once again, is a measure of our concern for trees - a fine ranging from \$1.00 to \$20.00. The other statutes governing parks have similar provisions in them or in

the regulations made under them.

However, with the possible exception of the National Parks Act, none of these statutes impose any real duty on governments to protect and maintain parks and green areas; at least no duty that the citizen can enforce.

Under the Provincial Parks Act, for example, the Minister of Natural Resources may, by a mere regulation not subject to scrutiny by Parliament, alter any boundaries of any of its provincial parks, and possibly even wipe out an entire park. The boundaries of the North Georgian Bay Recreational Reserve were altered to allow industrial exploitation of the natural resources before the park was even opened.

The government can, and does, allow all kinds of economic exploitation in its parks. Mining, logging and quarrying are major industries in and around provincial parks.

The recent litigation by the Canadian Environmental Law Association over the provincial government's permission to Lake Ontario Cement Company to cart away irreplaceable sand dunes from the borders of Sandbanks Provincial Park showed clearly that the government does not hold its park lands on any public trust. Despite section 2 of the Act, which reads

All provincial parks are dedicated to the people of the Province of Ontario and others who may use them for their healthful enjoyment and education, and the provincial parks shall be maintained for the benefit of future generations in accordance with this Act and the regulations,

Mr. Justice Lerner held that there is no public trust which can be enforced against their government by the people of Ontario.

#### PLANNING FOR TREES

Our legislation adds up to a system which is much more concerned with the right to cut down trees than imposing duties to plan for planting and preserving them.

Among the few attempts to plan for trees, we have section 2(1)(i) of the Local Improvements Act, which provides that the planting and maintaining of trees and shrubs on streets may be undertaken by municipalities as "local improvements", and section 33(5) of the Planning Act, which allows the Minister of Treasury, Economics and Intergovernmental Affairs to impose a condition on the approval of any subdivision that trees or parkland be preserved or incorporated into the scheme.

Neither of these Acts impose any duty on the government officials to do these things.

#### LEGISLATION IN OTHER JURISDICTIONS

The state of our legislation can be usefully compared with other countries. The British Civic Amenities Act, for example, gives priority to the preservation of historic sites and the planting and preservation of trees. This statute lays a duty on planning authorities to require developers to plant and preserve trees. Local planning boards have the power and a statutory obligation to stimulate the preservation of existing trees and the planting of new ones.

Once a tree is planted, the Act provides for "tree preservation orders" to prevent anyone from cutting it down. The owner must plant a new tree on the same spot or nearby if the tree dies or is cut down. This new tree automatically becomes subject to the preservation order. If the owner fails to replace the tree the local authority may do so at his expense.

Under this Act, the British Civic Trust, a charitable group, has transplanted over 600 semi-mature trees from 20 to 30 feet high from the country to London to fight urban decay.

The United States has also recognized in its legislation, for example in the Department of Transportation Act, that a special effort should be made to protect historic sites and parklands. In the Overton Park case the United States Supreme Court interpreted this Act to mean that roads are not to be built through parklands unless alternative routes present "unique" problems. The Court stated that protection of parklands is to be given paramount importance over the need for roads.

A comparison between this foreign legislation and our own reveals how far we in Ontario must go to reach a civilized attitude towards our environment. We have laws to punish individual vandals (enforced by ridiculously low fines), but few laws like Britain has, compelling tree owners to care for their trees and developers to plan for trees. Nor do we have laws like the United States has, placing a duty on government bodies to justify their destruction of trees and parkland.

This lack of protection for trees is just one aspect of a widespread lack of protection for the natural environment in Ontario.