

LAWN & Garden

Who owns the tree?

Trees can become a costly expense to homeowners, especially if a tree needs to be removed, maintained or treated for disease (as many homeowners have discovered with the recent explosion of the Emerald Ash Borer.) Therefore, to understand which neighbours have to bear the potential cost of the tree on the property, the question is "who owns the tree?"

■ Where the base of the tree lies is the determining factor of who owns the tree. A tree with a base completely located on a single property, is owned by the owner of that property. A tree with a base growing on the boundary between two properties is common property between



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the owners of the two properties.

■ Whoever owns the tree is responsible for maintenance of the tree. Therefore, if the tree is on the boundary and has two owners, both neighbours must agree to the maintenance of the tree.

■ If you are not the owners of the tree and you wish to prune or maintain the tree, beware:

- You could be found liable for trespassing if you do not have the written consent of the owner of the tree and you interfere with the tree.

- You could be liable of an offence under the Forestry Act (s. 10 (3)) which states "Every person who injures or destroys a tree growing on the boundary between adjoining lands without consent of the land owner is guilty of an offence under this Act."

- Further you must be aware of the municipal by-laws that are in place in your area.

Residents of the City of Ottawa must abide by the Urban Tree Conservation By-law. The

Urban Tree Conservation By-law (s.5) states that "No person shall injure or destroy a tree or cause the injury or destruction of a tree unless a tree permit has been issued by the General Manager to permit the injury or destruction."

- A tree permit will be required in all cases unless it falls into one of the exceptions. The most common exceptions include:

- Pruning is necessary to maintain the health and condition of the tree and is carried out in

accordance with good arboricultural practices.

- The tree is an immediate threat to public health and safety.

- The tree is not a distinctive tree and is located on a property one hectare or less in area.

The act defines a distinctive tree as any tree with a diameter at breast height of 50 centimetres or greater.

A person who is convicted of an offence under the by-law is liable to a minimum fine of \$500 and a maximum fine of \$100,000.

Jacques Robert is a real estate lawyer with offices throughout the city. Visit www.jacquesrobert.com



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