

## Trees and the Ontario Homeowner

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An old Latin phrase serves as a good introduction in a discussion involving trees and Ontario landowners: “Cuius est solum eius usque ad caelum et ad inferos.” Roughly translated this means: whoever owns the soil owns all the way to the heavens and to the depths of the Earth. This is more of a colorful legal phrase than a true statement of law.

In truth we do not own property to the heavens or down to the core of the Earth. The law interprets property ownership reasonably. The law takes into consideration the rights of homeowners versus the rights of citizens to enjoy the airspace high above homes. Property owners, therefore, own a reasonable amount of space above their homes, being the space that can reasonably be occupied.

For clarity it is useful to review some practical situations facing the Ontario homeowner. What does a homeowner do when faced with overhanging branches from a neighbor’s trees? A homeowner may be entitled to remove the overhanging branches of a tree belonging to an adjoining landowner. Overhanging branches become the property of the owner of the lot over which they are located.

One cannot simply cut and run, however. There are several exceptions to the above rule:

- a) Beware overhanging branches and trees that have grown from government property. There may be bylaws preventing the cutting of trees. Always check with your local municipality before trimming branches from adjoining land, whether the land is owned by the municipality or not.
- b) If the trimming of branches could cause the death of the tree the homeowner who trimmed the branch could face legal action. Try to seek the permission of the homeowner in writing prior to trimming whenever death of the tree may occur.

If a tree falls.....

In the case of trees falling from your neighbor’s property onto your property: A homeowner is entitled to be reimbursed for the cost of removing the tree. What about damage to property if the tree falls through a shed? The courts do not like to transfer liability from one innocent party to another. A Canadian case recently examined whether homeowners carry a duty to have trees on their property examined by experts to determine the existence of illness or hazard. The court held that reasonableness dictates that homeowners should pay attention to trees on their property and the general condition of the trees. There is a duty on the homeowner to take action if signs of decay become visible from an ordinary and reasonable vantage point. Expert opinion on the health of trees is not required.

The above scenario demonstrates the importance of keeping records. If you warn your neighbor that a tree on her lot may have an illness and may fall on to your property you should keep a written record of this conversation. It also demonstrates that if a tree falls in a violent storm the owner of a tree will not likely be liable for damage caused. Proper insurance may provide compensation to homeowners for their losses rather than legal action against an innocent adjoining landowner.

Thank-you for reading. Please contact the undersigned for further inquiries. We would ask that you consider our firm for any future real estate, wills and estates, and/or corporate law assistance you, your clients, or your family may require.

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