

**From:** [Ron Steffler](#)  
**To:** [Sarah Johnson](#)  
**Subject:** Forest and tree management  
**Date:** March 21, 2021 10:12:16 AM

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**[EXTERNAL EMAIL]**

We would like to thank this committee for considering our concerns for consideration .

We own 110 acres in West Grey with about 75 acres of wood lot. I am doing my best to be a responsible Stewart and wood lot manager.

Then we see what's happening around us and wonder " why bother ".

We have a municipal official plan and a Provincial OP and yet we see major changes and wonder how this is being permitted. A good example is the large subdivision of 50 or more home being built in a mature maple bush on C - 10 of West Grey. Hundreds of trees being cut down to accommodate city people that want to come to the country.

Now we have farmers coming North where land prices are some what cheaper than where they farm.

A cash cropper has recently bought up 4 farms in West Grey on C -6 and has removed all the fence rows with hundreds of trees then cleared 6 acres of scrub trees which was habitat for wild life for years. They didn't stop there. They then uprooted and damaged all the mature maples on the road allowance which contravene section 6.1 and 6.2 of the woodlot bylaw. These trees will all die, why?

This year a developer bought a couple acres in C -4 and has cut hundreds of trees of which many are large mature maple trees.

The above practices will continue unless you look at changing the bylaw to include fence rows, I do realize that farmers have the right to farm but with global warming and air quality being a concern one would think it's time to stop what's happening sooner than later.

Perhaps Grey-Bruce should take the lead in this and be proactive to stop clearing and cutting all the tree on fence rows.

I know that if I want to cut a few trees to sell for lumber; I need a permit and an inspector to come in and see what trees will be cut and make sure they are of legal size and yet these people buy up farms and cut down hundreds of trees with no permits!! How does this differ from me cutting a few trees to sell for lumber logs????

Thank you for possibly changing the by law to stop this practice.

I have spoke with many neighbours about this and they all have the same concerns

Ron Steffler

**From:** [Pamela Spence](#)  
**To:** [Travis Sandberg](#); [treebylaw@thebluemountains.ca](mailto:treebylaw@thebluemountains.ca); [Group: Forests and Trails](#)  
**Subject:** Comments ahead of Open House March 24  
**Date:** March 23, 2021 4:55:41 PM  
**Attachments:** [Open House Pre- Comments March 22.docx](#)

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**[EXTERNAL EMAIL]**

As promised here are my comments ahead of the Tree/Forest open house.

Thank you for your consideration of these comments.

See you tomorrow!

Pamela Spence



March 22,2021

Comments provided on the occasion of the Public Open House of March 24,2021 to:

Town of The Blue Mountains c/o Travis Sandberg

County of Grey c/o Sarah Johnson

From: Pamela Spence [REDACTED]

The Town of the Blue Mountains declared a Climate Emergency over a year ago! The Town is in the process of creating a new Sustainability Plan because it cares about the current and future Town of Blue Mountains. Trees are an important component to the Blue Mountain environment, a tool to positively affect climate issues and fundamental to the natural environmental systems of this area. Proper steps must be taken to identify what, where and how these features need protection, preservation and restoration be it a single tree, a forest or the larger natural systems environment.

While I applaud the steps taken to inform the public on March 24 of the information to be presented in the Open House, I find that there is no reference to a tree canopy or forest management or natural heritage study or plan. Based on my research and reference to the Town's Official Plan of 2016 and The Sustainable Path 2010 (policies referencing these related actions are attached), there are a considerable number of policies and actions that have been in place for numerous years that direct the Town to do this planning. A strategy for tree preservation, restoration, protection and planting should be done before there is a change to the Tree By-law. Changing the by-law without either a Town-based Natural Heritage Systems Study or a Forest Resource Stewardship Strategy or Plan would be putting the cart before the horse.

Plans prepared based on the policies indicated in the Official Plan and the Sustainable Path give the planners direction on how to set up the tree strategy. This would give planners, developers and landowners the guiding principles by which they know they must act or the by-law will be enforced.

The tree/natural resources strategy should govern all properties in the town and not just municipally owned lands. The community must be part of the solution and not look solely to the Municipality to control its green resources. We have inherited a situation and we all have to act together to protect it for our future generations.

Please consider a larger undertaking and prepare a tree, forest, or natural heritage strategy before advancing the tree by-law.

Thank you for your consideration of this message.

Pamela Spence

## References

### The Blue Mountains Sustainable Path 2010

Environment and Ecological Integrity – page 23-25

#### GOAL – Develop links between natural areas and wildlife corridors

##### Strategies and Actions:

##### **Develop Strategy and Guidelines for the enhancement of natural heritage features**

Complete a *natural heritage study* as input to revise the Official Plan and Zoning By-laws to strengthen the protection of the natural heritage areas

Implement enhanced minimum buffer areas around natural heritage features

Develop a public lands acquisition and implementation plan

Council to allot a percentage of Parkland budget to establish and maintain natural parks

Establish citizen's group to raise funds to protect and expand our natural heritage

Encourage partnerships among environmental groups and agencies

Identify specific parcels of land to enhance natural and wildlife linkages and purchase when appropriate

Establish *landscape architectural guidelines encouraging use of native species in landscaping where applicable*

*Require remediation/restoration plans* for development

Continue to *require green space allocations* in new developments

Establish *wildlife corridors* to improve habitat connectivity

##### **Encourage stewardship of the land**

*Provide education, tax incentives and benefits for land stewardship*

Create a Town-led Environmental Advisory Committee and include a 'Youth Wing' on the committee

#### GOAL – Achieve long-term conservation of existing forest resources for future generations.

##### Strategies and Actions:

##### **Encourage and enhance protection of forested lands**

Establish forest resource stewardship strategy and plan that includes:

Builds upon Grey County's inventory of forest resources

*Identify an optimum target for forest cover*

*Create a mix of natural and managed forests to promote ecological and economic diversity*

*Evaluate and enhance urban canopy to better utilize nature to promote increased energy efficiency in built environment*

*Identify priority areas for conservation and buffer areas*

*Protect woodland and forest resources from incompatible adjacent uses  
Reduce development pressure by directing development away from forested areas*

*Avoid fragmentation of forest habitat*

*Support reforestation efforts*

*Encourage partnerships, and support the efforts of agencies involved in the management and preservation of forested ecosystems*

*Incorporate forest management strategies in natural heritage strategy*

*Support conservation programs to reforest privately held forest lands*

*Develop tree protection, replacement and enhancement policies and by-laws in urban areas*

***Improve community understanding of the importance of the Town's forest resources***

*Establish annual resident tree planting event that includes an educational awareness component*

*Convene field trips to the Loree Forest and the Kolapore Uplands Nature Reserve*

**GOAL – Provide education and marketing on the value of the local natural environment**

Strategies and Actions:

**Instill responsibility in people as custodians of natural heritage**

Prepare a brochure for newcomers to the community

Develop and implement a communications and education strategy

Explore opportunities to educate the public about local natural heritage and biological resources (e.g. partnerships with local retailers, Landscape Ontario, local magazines)

Engage youth to become ambassadors for the natural environment

Work with local community, land stewardship groups and our municipal neighbours to expand stewardship efforts

Establish annual neighborhood cleanup and environmental restoration program/event

**Nurture a 7-generation mentality in our Townspeople**

The Town's Event and Youth Coordinator will encourage an understanding of the 7-generation mentality with schools and youth

Hold Seminars in schools which are open to all persons in the community

Consider a procedure to ensure that the potential environmental, social and economic impacts of current and proposed initiatives are sustainable

**Page 51 GOAL – Build strong neighbourhoods through sustainable neighbourhood design**

Strategies and Actions:

**Evaluate and enhance urban canopy to better utilize nature to promote increased energy efficiency in built environment**

Implement green space policies in development standards to ensure native plantings of shade trees particularly around park and play areas

**Protect and preserve natural environment and green space within walking distance of neighbourhoods**

Revise the Official Plan and zoning by-laws to strengthen the protection of the natural heritage areas by implementing minimum buffer areas around natural heritage features;

Maintain the existing “green space” character of The Blue Mountains

**Town of the Blue Mountains Official Plan 2016**

Guiding Principles, Goals and Strategic Objectives

Pg 14 – “The Blue mountains is a community that supports the protection of our natural and rural resources.”

Pg 16 – “To protect natural heritage features and areas and their ecological functions so they can be enjoyed by current and future generations and serve as a legacy of the community’s desire to protect their role and function

Pg 22 – A3.1 Sustainable Development

A3.1.2.10 – “Develop design standards that encourage the use of natural and/or naturalized landscapes in new developments to improve air quality”

A3.2 Natural Environment

A3.2.2.1 through to 9

A3.2.2.9 – “Promote and establish programs to increase the forest cover in the Town”

Pg 25 – A3.5 Rural and Open Space Character

GOAL – “Preserve and enhance landscape amenities”

Pg 139 – B5.2 Natural Heritage Features

“It is a policy of this plan that a natural heritage system be prepared in accordance with the County of Grey Natural systems Study”

Pg 141 – Chart - Natural Heritage Features include significant woodlands and 120m of adjacent land

Pg 153- 164 Section C – Water Environmental and Hazard Policies

This section refers to creating plans that are necessary for the protection and restoration of streams, flood protection, source water protection, stormwater management, hazardous slopes and watershed planning. These all require trees to retain and filter water, shade from evaporation and stabilize from soil erosion.

Pg 211-212 Tree Canopy

Policies for supporting the protection and enhancement of tree canopies include:

- encourage planting of native or non-invasive species....through new development and municipally owned land
- implement measures to protect, enhance and expand the tree canopy
- consider the establishment of a forest stewardship strategy and plan
- require reimbursement, trees, or compensation for trees removed in new development based on a Tree Inventory and Preservation Plan;

-encourage tree planting by local residents..... and environmental impact of tree removal

**From:** [Travis Sandberg](#)  
**To:** [Sarah Johnson](#); [Group: Forests and Trails](#)  
**Subject:** FW: Tree By-law Update - Open House  
**Date:** March 22, 2021 1:40:07 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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**[EXTERNAL EMAIL]**

Hi Sarah,

Some more comments below for your file.

Cheers,

**Travis Sandberg**

Planner I

Town of The Blue Mountains, 32 Mill Street, P.O. Box 310, Thornbury, ON N0H 2P0

Tel: 519-599-3131 ext. 283 | Fax: 519-599-7723

Email: [tsandberg@thebluemountains.ca](mailto:tsandberg@thebluemountains.ca) | Website: [www.thebluemountains.ca](http://www.thebluemountains.ca)

**IMPORTANT INFORMATION**

All Council, Committee of the Whole and Committee meetings will continue to be hosted virtually until further notice. If you plan on visiting Town Hall, please continue to maintain six feet of physical distancing while on site and wear a facemask to help ensure safety of others.

For in-depth, in-person service needs, such as planning services, building services, applying for a marriage licence and the commissioning of documents, a scheduled appointment will be required as drop-in service will not be available. To schedule an appointment, please call Town Hall at 519-599-3131 or visit the Staff Directory on the Town website to find the appropriate contact information: [www.thebluemountains.ca/staff-directory.cfm](http://www.thebluemountains.ca/staff-directory.cfm)

To help limit traffic into Town Hall, residents are reminded that online and telephone services continue to be available. Details regarding online services can be found on the Town website by visiting: [www.thebluemountains.ca/online-services.cfm](http://www.thebluemountains.ca/online-services.cfm)

As part of providing [accessible customer service](#), please let me know if you have any accommodation needs or require communication supports or alternate formats.

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**From:** PAUL ROBERTS [REDACTED]  
**Sent:** Monday, March 22, 2021 11:26 AM  
**To:** Tree By-law <[treebylaw@thebluemountains.ca](mailto:treebylaw@thebluemountains.ca)>  
**Subject:** Tree By-law Update - Open House

Attention Travis Sandberg

Presumably the Town and County want to update and improve the current tree by-law.

1. Section 2a of the By-Law sets out under what terms the by-law would apply. While this may be clear to those parties who work with trees as part of their job, it implies that only a tree that "is identified as a tree for preservation on a tree preservation plan or an area of tree preservation forming part of, or referenced, in an agreement entered into with the municipality" is applicable. Therefore it appears to assume that anyone contemplating the destruction of a tree or trees on their property knows whether said tree falls under this scope. I would suggest that many trees are destroyed each year because the property owner does not know if the tree is covered by the by-law. I am not suggesting that this applies to an area with a large number of trees. However, we have seen examples where parcels of land have effectively been clear cut without checking with the Town.

2. There is nothing in the by-law which defines the size of the piece of land upon which a person can cut all or most of the trees without getting permission from the Town. This is especially true where one or more adjoining parcels may be clear cut because they may not meet an area threshold individually but do so in total. This happened in the vacant lot adjoining our house a few years ago. Better to do the clear cutting and then find out if it was illegal.

3. Section 2b basically says that "no person shall destroy or cause to be destroyed any tree that is located on land owned or managed by the Town or County or local road". This is quite understandable. However, the By-Law does not apply equally to "activities or matters undertaken by the Town or County or local board. In my opinion a tree is a tree and as such there should be similar rules. At the very least there should be some process for approving whether such a tree must be destroyed. Trees are very important in terms of climate change.

4. I was not aware that the Town or County had something in writing concerning forestry management but expected the County would have something. I looked at the website for the City of Toronto and it has a Strategic Forest Management Plan which is concise but has 6 strategic goals. I would recommend that you look at this Plan and see if would help set targets for our Town and County.

5. The City of Toronto by-law re destruction of trees also includes a clause that indicates that a tree over a certain diameter (30 cm) cannot be destroyed under approved. They also have a height clause for measuring the diameter. The present Town by-law uses a height rule. I am not sure which is better or if both would be better.

6. I realize that new developments appear to be exempt under the present by-law but this means that it will take a long time for new trees to grow. There should be an attempt by the developer to leave mature trees standing where possible based on house location.

Travis Sandberg,  
Planner I,  
Town Hall,  
32 Mill St. Box 310,  
Thornbury ON,  
N0H 2P0

Dear Travis

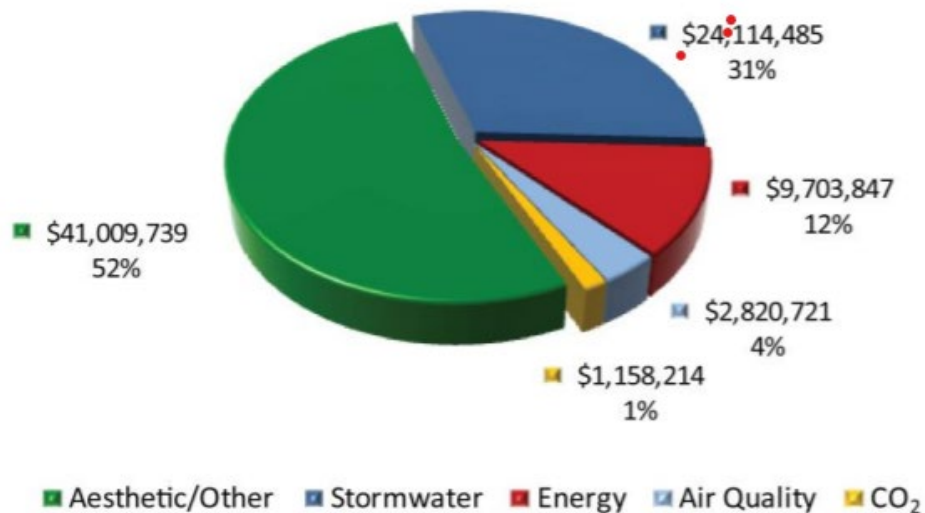
**Re: Comments regarding Municipal Tree By-Law - Public Meeting March 24<sup>th</sup>, 2021**

It is appreciated that the intent of the changes is to consider extending the scope of the existing By-law 2010-68 to include a wider variety of trees within the Municipality, potentially including those located on private property. It has though been:

- Over two years since all municipalities were required to adopt and maintain policies to protect and enhance the tree canopy and natural vegetation within their communities.
- Nearly been two years since the last staff report dated November 2019. Therefore, limited one to the above intended changes seems redundant especially after the Town declared a climate emergency in the fall of the same year 2019

**Questions: How has the Town's declaration of a Climate Emergency impacted the proposed revisions/changes over the last 16 months? Why has the Town chosen not included the economic value of trees in stormwater management as other municipalities have done to date, i.e., as illustrated in Figure 1?**

**Figure 1: Economic Value of Trees in Storm Water Management**



**Figure 1. Environmental and economic benefits extrapolated for 567 Indiana communities using i-Tree Streets. [http://www.itreetools.org/resources/reports/Indiana\\_Statewide\\_Street\\_Tree\\_Analysis.pdf](http://www.itreetools.org/resources/reports/Indiana_Statewide_Street_Tree_Analysis.pdf) viewed 11 May, 2011.**

The Urban Forest Management Plan for the Town of Collingwood 2020-2030 contained the following recommendations:

- The Town undertake an i-Tree Eco Project to baseline & measure the form, function, and value of the community's urban forest
- The Town undertake an i-Tree Hydro Project to assess the impact of tree canopy cover on stream flow

Upon review of other jurisdiction policies regarding tree preservation, removal, canopy etc. across Ontario there are significant elements missing from the proposed changes to the by law and include this by-law reflecting:

- Protection of trees meaning all trees. Municipally owned trees are green infrastructure and therefore should be considered a municipal/community asset and in need of protection/preservation
- The critical role trees play in stormwater management (a responsibility of the Town) and includes:
  - Reducing stormwater runoff by capturing and storing rainfall in their canopy and releasing water into the atmosphere.
  - Roots and leaf litter create soil conditions that promote the infiltration of rainwater into the soil.
  - Slows and decreased the path of rainfall down and recharging of groundwater and temporarily store runoff. The amount of net precipitation has a direct relationship with tree canopy density<sup>1</sup>
  - Trees reduce runoff by millions of gallons and saves municipalities tens of thousands to millions of dollars annually in stormwater management facility cost<sup>2</sup>
  - Transform pollutants into less harmful substances

The role trees play in stormwater management are partially critical in the parts of the Town i.e., Thornbury West there where is known deficient storm water infrastructure. Trees need to be considered part of either grey or green stormwater management systems as it is false to consider to be solely of landscaping value.

With each residential development comes increased impervious surfaces and collectively compound, existing stormwater systems which are often inadequate to handle peak flows. When a system is overtaxed, peak flows back up stormwater and/or cause unnecessary ponding on streets and roads.

### **Question: Why is the designated authority the Director of Planning and Development?**

While the Staff Report states that similar to many other municipal jurisdictions, the administration and issuance of a 'permit' is at the sole discretion of the Director of Planning and Development Services, Other municipalities have the designated authority resting with the Director of Engineering and/or Operations. This would avoid any conflict of interest with progressing a residential or commercial development the former which is most associated with excessive tree loss and the resulting impact on storm water management. The designated authority, therefore, should rest with the Director of Operations to avoid a conflict of interest and ensure that the impact on stormwater and other infrastructure is appropriately reviewed.

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<sup>1</sup> R Winkler, The Effects of Forest Disturbance on Hydrologic Processes and Watershed Response, Chapter 7 December 2010

<sup>2</sup> Urban Forest Management Plan for The Town of Collingwood 2020-2030  
Stormwater to Street Trees: Engineering Urban Forests for Stormwater Management USDA 2013

**Question: How does this Bylaw update progress the town in fulfilling the Bill 68 – Municipal Act Changes and Requirement for Municipal Tree Canopy Policies which was required by March 1<sup>st</sup>, 2019?**

Ontario Bill 68, titled Modernizing Ontario's Municipal Legislation Act, 2016, as it relates to the requirement for all municipalities to adopt and maintain policies to protect and enhance the tree canopy and natural vegetation within their communities as proclaimed by the Lieutenant Governor, Ontario municipalities had until March 1, 2019, to adopt such policies.

Bill 68 required municipalities to move beyond solely conserving existing trees, and is intended to promote and enhance vegetation, especially in urban areas, to provide a cooling effect and sequester carbon, be a form of green infrastructure, and increase climate change resiliency.

Generally, municipalities consider existing tools that protect and/or enhance trees and natural heritage features. Examples of tools include By-laws which support the preservation of trees, as well as the protection and implement measures to protect, enhance, and expand their tree canopy<sup>3</sup>, i.e.:

- By-law for woodlands management
- Tree Preservation By-law,
- Tree Cutting By-law
- Tree Conservation By-law, etc.
- Tree Inventory and Preservation Plan
- Forestry Master Plans inclusive of a Tree Inventory and Preservation Plan;
- Grant for tree planting
- Municipal sustainable management practices

Kind regards,

June Porter MScN MBA



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<sup>3</sup> TBM Official Plan page 211-212

**From:** [Christina Eaton](#)  
**To:** [Tree By-law](#); [forests@grey.ca](mailto:forests@grey.ca)  
**Subject:** Municipal Tree Preservation By-Law Meeting - March 24  
**Date:** Monday, March 22, 2021 8:25:10 AM

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# Hello,

I am submitting these comments in advance of the Open House to be held on March 24 at 5 pm.

As part of the Harbour West Residents Group (HWRG), I am particularly concerned about the old-growth cedar trees in our neighbourhood. It is imperative that these trees be protected and preserved. Damaging these trees in any way will result in irreparable harm - they cannot be replaced. Losing the cedar trees would also significantly impact the character of our neighbourhood in a negative way.

The Abbotts Land Development proposal unfortunately makes no provision for the protection and preservation of the tree and vegetative canopy. Destruction of the old-growth trees which currently reside on the unopened road allowance would result in major privacy issues, drainage issues and uglification issues for our neighbourhood. This needs to be considered before any development is permitted.

In conclusion, there's lots of land around Thornbury for planned subdivisions which would not require the clear cutting of old-growth trees. Development should be focused in areas which do not require trees to be destroyed.

Sincerely,

Christina Eaton



**From:** [David s](#)  
**To:** [forests@grey.ca](mailto:forests@grey.ca)  
**Cc:** [Tree By-law](#)  
**Subject:** Comments/ questions re tree bylaw initiative  
**Date:** Monday, March 22, 2021 9:27:09 AM

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Question:

If the town council was approached by a developer who owned a piece of land within the town and had two separate plans to develop it outlined below:

A) a plan with the developer creating their own road within the parcel along with construction of single dwelling detached homes keeping in character with the rest of the neighborhood and leaving the mature tree canopy undisturbed on the surrounding road allowances

Or

B) another plan with double the number of units using semidetached housing, that is not in keeping with the character of this particular neighborhood .....AND In this second scenario, it requires You to give the developer the unopened road allowances that are covered in a thick stand of old growth cedar forest in order for the developer to be able to build for greater profit by cutting down those acres of mature ancient cedars to allow the developer to use the town road allowance, which would you choose?

Would you choose the first plan, which both saves the mature ancient cedar tree canopy while still allowing the developer to build and profit and also keeps the character of the neighborhood in tact..... or the second plan, that gives up the road allowance and in doing so, destroying acres of ancient cedars and tree canopy only to pave the way for more profit to the developer and negatively changing the character of the neighborhood in the process? Explain your choice in detail.

I look forward to your response.  
David Small

March 21, 2021

Re: Municipal Tree By-law update and Grey County Forest Management By law Update.

Travis Sandberg, planner  
cc. sarah johnson

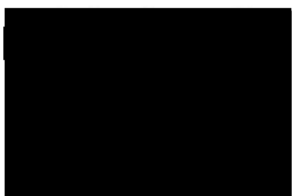
The decision to cut a tree or clear cut mature trees should not be made lightly. Not only are trees what forms the character in a town and a neighbourhood but it houses an abundance of creatures from beneficial pollinators to birds and squirrels. This all sounds rather fluffy until you start taking into account what a mature tree and a tree canopy does for producing carbon for a changing climate.... A CLIMATE CRISIS.

We have stated in The Town of The Blue Mountains that we are in a climate crisis but how are we going to move forward and set up the proper by laws to developers and clear cutters of mature trees? It takes 250 sapling trees to equal the carbon storage ability one large healthy tree!!!! A tree canopy in an unopened road allowance has the ability to sequester thousands of tonnes of carbon, therefore helping climate change

Stop the clear cutting of mature trees in our neighbourhoods and development lands.....Take a stand on the climate crisis.

Sincerely

Al and Keri Lockhart



**From:** [CATHERINE HOWELL](#)  
**To:** [Tree By-law](#); [forests@grey.ca](mailto:forests@grey.ca)  
**Cc:** [Helmut Hock](#)  
**Subject:** Tree canopy  
**Date:** Monday, March 22, 2021 9:10:37 AM

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We live at 80 Lakeshore Drive and we are members of the Harbour West Residents Group. We have been living in this area since 2005. The mature tree canopy creates rural laneway feel and is what drew us to this particular part of Thornbury. The old growth trees are an integral part of our neighbourhood and is why so many people who visit Thornbury and local residents enjoy strolling down Lakeshore Drive. It is well documented and studied that trees improve the quality of life and health for people; and trees provide a habitat for birds and wildlife. Without these mature trees the charm of our neighbourhood would be lost. They cannot simply be replaced by planting younger trees.

The Town of Blue Mountains has a responsibility to maintain the beautiful character of Thornbury and surrounding area by developing bylaws which protect the tree canopy. Please do not turn this area into a bland, charmless and suburban area devoid of what brought us and so many others to this glorious place.

Respectfully,  
Helmut Hock and Catherine Howell



Sent from my iPad

MUNICIPAL TREE BY-LAW UPDATE AND GREY COUNTY FOREST MANAGEMENT BY-LAW  
MARCH 24, 2021 PUBLIC MEETING

# HARBOUR WEST RESIDENT'S GROUP COMMENTS (THORNBURY)

- Harbour West Resident's Group was formed in 2016 to collaborate with the Town and Abbots Development of 2.7 acres west of the Harbour in Thornbury and preserve the adjoining 1.7 acres of unopened road allowances

# PREVENT PIECEMEAL CLEARCUTTING

- The new by-law should prevent piecemeal cutting over time which can be used as a loophole to cut as much as a developer or a resident wants
- The Abbotts parcel is over 1 hectare yet was clearcut without recourse as it was done over time

BIRD'S EYE VIEW

2015



Most recent clearcut



## INVENTORY AND PRESERVATION OF TREES ON TOWN LANDS SUCH AS UNOPENED ROAD ALLOWANCES

- While not listed for opening in the Official Plan, Town approved opening Victoria Street South and Bay Street West to the benefit of one developer, adding 62% to the land available
- If the 2.7 clearcut acres and the 1.7 acres of unopened road allowances are combined, it totals 4.4 acres. 60% of that tree area was scrubbed by the Developer, opening the road allowances will complete the clearcut to 100%
- No public meeting is being held on the dispensation of these unopened road allowances in favour of one Developer

ADDITIONAL 1.7 ACRES WILL BE CLEARCUT  
FOR ROADS THAT WILL GIVE 24 HOMES A DOUBLE FRONTAGE, DECREASE PRIVACY AND CHANGE THE NEIGHBOURHOOD CHARACTER



## Development Plan Changes





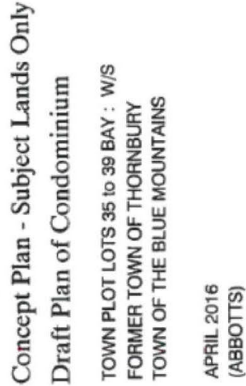
# BOUNDARY AND BORDER TREES

- Survey and clearly mark border trees
- Border trees are protected in Ontario and are defined as any about of the trunk on two pieces of property as measured from the tree root-collar to the first branch
- During clearcutting residents were getting in front of bulldozers as the Town had not been notified clearcutting would occur up to the unopened road allowances which were not marked or surveyed

# MAKE FINES SUBSTANTIAL

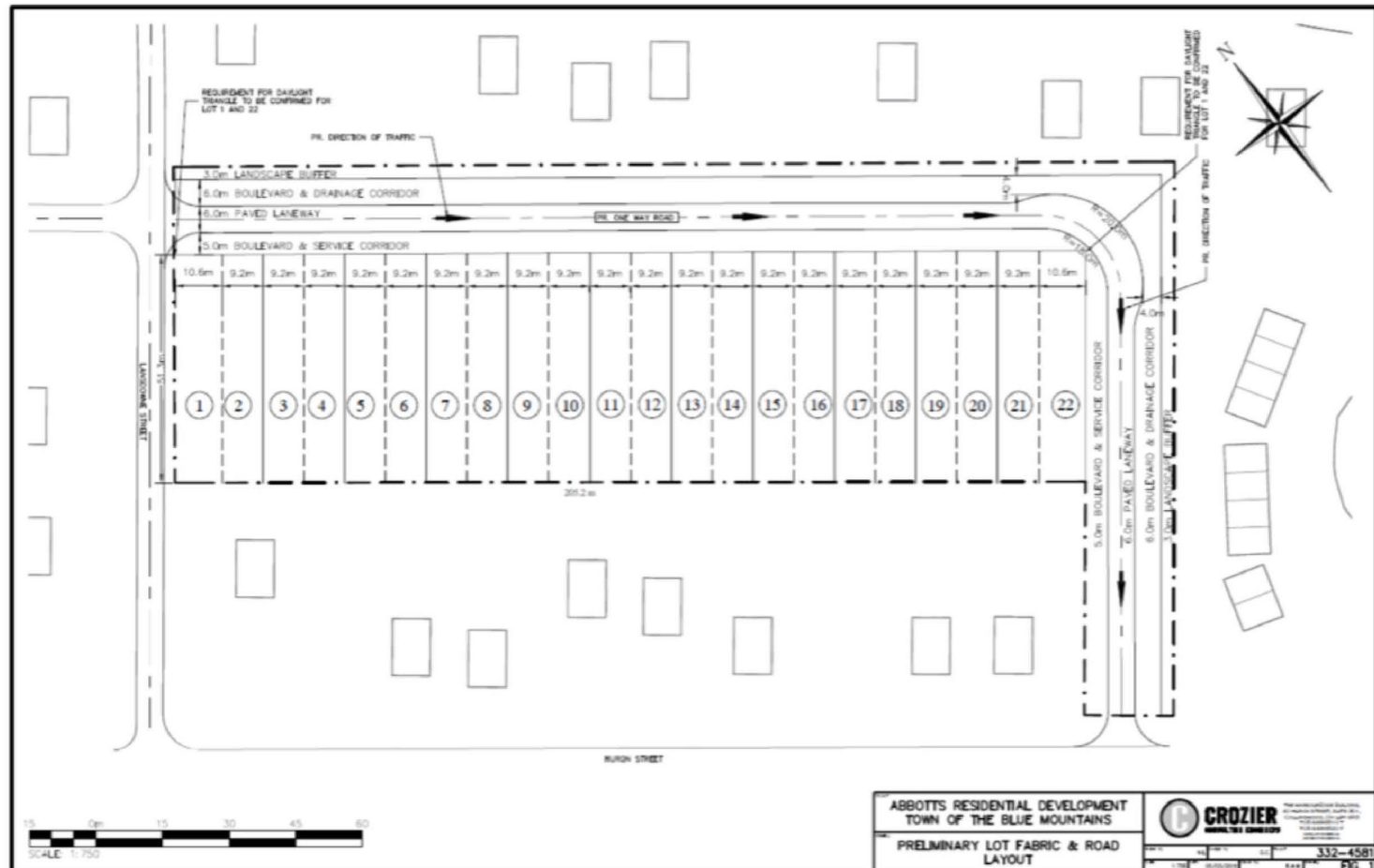
- Paying fees for cutting trees against the new by-law should not be low enough that a multi-million dollar development considers the fees the cost of doing business. They should be punitive and escalate significantly upon repeated offences

- Planning's priority is not preserving trees so another authority should be in charge of negotiating with developers and enforcement



## Option 1 – Concept Plan

Proposed 22 semi-detached residential units



# SUMMARY COMMENTS

- Prevent piecemeal clearcutting over time
- Inventory and preserve trees on Town owned lands
- Require public consultation to clearcut for road openings
- Fees for non-compliance should be substantial
- Create a position that can advocate for trees, as Planning is in conflict of interest

Grey County's Forest Management By-law is essential, and I am pleased that it is in place.

The rationale for the importance of our forests, and therefore the importance of this by-law needs to be clear to the public. The following reasons were not mentioned in your presentation on March 24's Public Open House. Perhaps this rationale could be considered for inclusion.

- To slow and reverse climate change - Trees sequester carbon and store it in the soil. Climate change continues to progress, and is doing at an increased rate as specific ecosystems are altered opening up carbon stores and accelerating the release of carbon into the atmosphere (e.g. the melting of the arctic permafrost etc.). It is incredibly urgent that we take action now.
- Forests are an essential component for climate change adaptation and mitigation for our local area as climate change progresses, especially with regards to the water cycle. This is expanded in the bullet below.
- Forests are an essential part of the Water Cycle – Trees and forests recycle moisture in the atmosphere through the process of transpiration to increase rainfall. The importance of forest and trees to rainfall and water supply include: improvement of water cycle, reduction of runoff, improving the replenishment of the water table, filtration of water pollutants, control of floods and regulation of stormwater.
- Forests protect our cold-water streams from over heating, which is essential for our fisheries. Trees that line/buffer surface water bodies are an essential component of those ecosystems.
- Forests slow winds and prevent soil erosion caused by wind. Fence rows, hedge rows, windbreaks are all essential.
- They clean our air and provide oxygen.
- They provide habitat for insects and birds, which are both on the decline. Birds provide important benefits to ecosystems, such as pest control, pollination, and seed dispersal. And insects are essential as food for birds and other wildlife, natural pest management, pollination, transferring beneficial fungi among plants, building soil health, etc. They are both essential components of our ecosystems.
- Trees create a cooling effect around them, a result of transpiration. These trees can be a relief to the heat of summer for many people, especially the elderly. They also can reduce the costs of air conditioning significantly if located on the south side of buildings and homes.
- Trees increase our quality of life.

A few points for consideration follow:

- Perhaps there needs to be some prioritization of no-touch zones. For example, trees alongside surface water, and the largest connected forest systems within the County should be considered of the highest priorities for protection. Even if these are located on agricultural lands, these should be no touch zones. Clean water sources are essential for the health of our drinking water, fisheries (and their food sources), and recreational activities etc. Perhaps this by-law needs to include buffer zones alongside surface water bodies, which would be no-touch zones. This would further protect these ecosystems

beyond the Conservation Authorities, which are slowly being stripped of their funding and legislation.

- Despite the suggestion above, we have degraded our landscapes so harshly that every forest has now become essential.
- In your presentation, you mentioned that the by-law applies to all properties in Grey County larger than 1 hectare, both private and public. Consider removing this minimum of 1 hectare. Especially, if these are on the outskirts of large forest tracts or along surface water bodies, as mentioned above.
- In terms of tree protection on agricultural lands, it was mentioned that the tree by-law is exempted for farm practices, and specifically fence rows are exempted. As agricultural fields expand in size, fence rows become more and more essential for bird and insect species survival, reducing winds and therefore reducing soil erosion of bare soils, for providing microclimates, for adding carbon to the soil within these agricultural field edges. As a farmer myself, I see the benefits of fence rows first hand. I feel that this exemption needs to be removed. GRCA's Field Windbreaks Fact Sheet Brochure indicates that farmers should "Strategically plant rows of trees adjacent to [their] farm fields to increase crop yields by slowing the wind and reducing moisture loss in plants and soil. This will also prevent erosion, increase pollinator habitat, provide wildlife corridors, increase snow deposition for added soil moisture, provide perching sites for raptors to decrease rodent populations and supplement farm income through forest products."
- Trees alongside roads next to agricultural fields also shelter the roads from blowing snow, improving road conditions during winter weather. These trees are essential for public's safety. This can save the County plowing costs, associated with drifting snow across roads for the lifespan of the trees, which could be up to 100 years!
- As a farmer, forests on our lands are also just as important as forests on other zoned properties for development and other business (although not all farmers might recognize this). And forests on agricultural lands should not be treated differently, especially if they are part of a larger forest tract and wildlife corridors, and alongside surface water bodies.
- In terms of exempting trees within abandoned orchards. If these orchards are surrounded by agricultural fields, they become wildlife sanctuaries, for birds, insects etc. And if these orchards are located next to large tracts of forest, it provides an opportunity for the forests to expand into these abandoned orchards over time. Abandoned orchards should not be exempt, unless they are harboring disease that is spreading to and influencing surrounding active orchards.
- If the by-law encourages replacement trees, then there should be guidelines to plant local, native species, based on the eco-district. And they should be planted during fall (and avoid plantings during the summer), when their chances of survival increase. A survival rate should be enforced.
- Fines also need to be included in this by-law, or trees will just continue to be removed. And the fines need to be of considerable value.

During your presentation on March 24, you mentioned that Grey County has an estimated 47% forest cover, can you provide a date associated with that statistic? Also do you know what percentage of forests have been removed over the past decade or twenty years?

Lastly, I have one question. Your presentation indicated that the County's Tree By-law requires harvesting trees for profit (e.g. firewood) must be done in a sustainable way that will promote forest health. What are the details around this? How is this applied to those removing trees for the sale of firewood, as per the comment that was provided during the talk?

Thank you for the opportunity to provide comments.

Julie Lamberts

Supported and signed by the following:

Leigh Grigg

Beth Anne Currie

Thorsten Arnold

Vitold Kruetzer

Tim Dixon

TREE CUTTING/PRESERVATION BY-LAWS:  
WHAT MUNICIPAL COUNCILS NEED TO KNOW ©  
October, 2012

Updated March 2021

A report created by the  
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## **Acknowledgement**

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We would like to thank Terry, for his contribution and support during the creation and editing of this document. Terry participated as Legal Advisor to the OLA research team for this report. Terry practices law in the fields of animal law, real estate and disabilities law. He has a BA, St Mary's University, 1978, Masters in Public Administration (MPA), University of Winnipeg, 1992, LLB, University of Ottawa 1999. Mr. Green retired in 2018-2019.



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## EXECUTIVE SUMMARY

Throughout Ontario different Municipalities are entertaining the implementation of Tree Cutting By-laws. These Municipalities, either under the *Forestry Act* or the *Municipal Act* have this authority for their own properties, or private properties with which the municipality has entered into an agreement with the owner of that property for specifically restricted actions pertaining to trees. But there are other superior documents that must be considered before the creation and passing of such by-laws. To expand - there are also agreements which must be entered into and/or municipal money spent on the foliage prior to enforcement of said by-laws under the *Municipal Act* and/or the *Forestry Act*.

The different statutes may include, but are not limited to, the *Constitution (British North America Act, 1867 [BNA])*, the *Forestry Act*, the *Conservation Land Act*, the *Public Lands Act*, the *Property and Civil Rights Act*, etc. Without investigating these other documents, the Municipalities may be creating by-laws which violate these superior documents.

The violation also includes interfering with the agreement between the Sovereign and the original property owner, Crown Grants/ Letters Patent, which are a superior document to Municipal By-laws, as these documents repeal certain sections of various constitutions and are considered part and parcel of the creation of Canada and Ontario.

It is with this report that we hope that our Municipalities will be protected from issuing licenses, permits, fees and fines that can be challenged in the courts, saving time, money and effort for both the Municipalities and the electorate.

## THE MUNICIPAL ACT

*“Section 14 indicates that a by-law is without effect to the extent of any conflict with a provincial or federal act. If the road allowance should be considered a highway, it could be said that joint jurisdiction requires both municipalities to pass a by-law and without that, a conflict with the Municipal Act could be perceived. However, the provisions of section 14(2) cause me to consider whether the lack of one of the joint jurisdiction municipalities to pass a by-law actually frustrates the purpose of the Municipal Act. It is possible to comply with the City of Owen Sound By-Law without committing an offence against the Municipal Act or any other legislation. Further the Owen Sound By-Law appears to be consistent with the intent of the Municipal Act to allow municipalities to have control over their own property, so I do not believe the by-law frustrates the purpose of the Municipal Act.”<sup>1</sup>*

In the Municipal Act, Sections 135, 394, and 461 involve Tree Cutting By-laws. Section 135 states that both upper and lower tier municipalities may create by-laws for the regulation and the prohibition of harvesting or damaging trees, and section 135<sup>2</sup> also refers the framers of by-laws to refer to the Forestry Act. Restrictions are placed on lower tier municipalities in 135 (4)<sup>3</sup> if the upper tier has/have implemented tree cutting by-laws. Section 135 (5)<sup>4</sup> again refers municipalities to have reference to the Forestry Act and regards to good forestry practices described in the Forestry Act. 135 (7)<sup>5</sup> expresses that municipalities may demand permits, fees and licenses for the removal,

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<sup>1</sup> Owen Sound (City) v. Bumstead, 2008 ONCJ 760 (CanLII)

<sup>2</sup> **Tree by-laws 135.** (1) Subject to subsection (4) and without limiting sections 9, 10 and 11, a local municipality may prohibit or regulate the destruction or injuring of trees. 2006, c. 32, Sched. A, s. 71 (1). **Woodlands** (2) Without limiting sections 9, 10 and 11, an upper-tier municipality may prohibit or regulate the destruction or injuring of trees in woodlands designated in the by-law. 2006, c. 32, Sched. A, s. 71 (1). **Definition** (3) In this section, “woodlands” means woodlands as defined in the *Forestry Act* that are one hectare or more in area. 2001, c. 25, s. 135 (3).

<sup>3</sup> **Restriction** (4) If an upper-tier municipality by-law in respect of woodlands is in effect in a lower-tier municipality, the lower-tier municipality may not prohibit or regulate the destruction of trees in any woodlands designated in the upper-tier by-law and any lower-tier by-law, whether passed before or after the upper-tier by-law comes into force, is inoperative to the extent that it applies to trees in the designated woodlands. 2001, c. 25, s. 135 (4).

<sup>4</sup> **Factor to be considered** (5) In passing a by-law regulating or prohibiting the injuring or destruction of trees in woodlands, a municipality shall have regard to good forestry practices as defined in the *Forestry Act*. 2001, c. 25, s. 135 (5); 2002, c. 17, Sched. A, s. 27 (1).

<sup>5</sup> **Conditions** (7) Without limiting sections 9, 10 and 11, a municipality may, in a by-law passed under this section, (a) require that a permit be obtained to injure or destroy trees; and (b) impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees. 2001, c. 25, s. 135 (7); 2006, c. 32, Sched. A, s. 71 (2).

injury and/or harvesting of trees on public lands, and sub-section (12)<sup>6</sup> involves exemptions from any tree cutting by-laws, implemented. These exemptions involve lower tier Municipal exemptions from upper tier by-laws (and/or vice-versa depending on which level has the most stringent by-law) on public lands, quarry exemptions, exemptions for Surveyors, development exemptions under the Planning act, exemptions under the Forestry Act, exemptions for electricity distribution towers/lines being constructed, etc.

Pertaining to tree management is Section 141<sup>7</sup> which authorizes municipalities to plant trees along road sides and with the consent of private property owners, to plant trees on private property. Please note that this section contains the provision that consent must be obtained from the private property owner for the municipality to plant trees on private property. That being said, why would a municipality need permission from a private property owner to plant trees and yet not need permission from a private property owner and/or yet require a private property owner to obtain permits, licenses and/or pay fees/fines for harvesting/using their private trees on/from their private property? It would stand to reason and historical documentation<sup>8</sup> that the municipality does not have the

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<sup>6</sup> **Exemption from by-law (12)** A by-law passed under this section does not apply to, (a) activities or matters undertaken by a municipality or a local board of a municipality; (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*; (c) the injuring or destruction of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey; (d) the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections; (e) the injuring or destruction of trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation; (f) the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section; (g) the injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; or (h) the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land, (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act, 2001*, c. 25, s. 135 (12); 2002, c. 17, Sched. A, s. 27 (3, 4).

<sup>7</sup> **Planting trees adjacent to highways 141.** Without limiting sections 9, 10 and 11, a municipality may provide trees to the owners of land adjacent to any highway and may plant the trees on the owners' land with their consent. 2001, c. 25, s. 141; 2006, c. 32, Sched. A, s. 75.

<sup>8</sup> An Act to secure Free Grants and Homesteads to actual Settlers on the Public Lands, [Assented to 28<sup>th</sup> February, 1868] "10. All Pine trees growing or being upon any land so located, and all gold, silver, copper, lead, iron, or other mines or minerals, shall be considered as reserved from the location, and shall be the property of Her Majesty, except that the Locatee or those claiming under him or her, may cut and use such trees as may be necessary for the purpose of building, fencing, and fuel, on the land so located, and may also cut and dispose of all trees required to be removed, in actually clearing said land for cultivation, but no pine trees (except for the necessary building, fencing, and fuel as aforesaid), shall be cut beyond the limit of such actual clearing before the issuing of the Patent, and all pine trees so cut and disposed of (except for the necessary building, fencing, and fuel as aforesaid), shall be subject to the

authority to implement “tree cutting/preservation by-laws” on private property without having previously entered into agreements with the private property owner, as expressed in the Forestry Act.

There are also the restrictions mandated in Section 394 of the *Municipal Act* which restrain municipalities, in regards to natural resources, with instruction that:

### **Restriction, fees and charges**

**394. (1)** No fee or charge by-law shall impose a fee or charge that is based on, is in respect of or is computed by reference to,  
(e) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources. 2001, c. 25, s. 394 (1); 2006, c. 32, Sched. A, s. 166.

And section 461<sup>9</sup> limits the degree of which a tree cutting/preservation by-law is to be implemented, granting to either lower or upper tier the most restrictive by-law. This could create competition between the lower and upper tier as to which would have the harshest most intrusive by-laws, with complete disregard for public input. It also expresses that after December 31, 2002, this section is not applicable.

In 2017 the provincial government amended the *Municipal Act*, 2001 through Bill 68. Bill 68 amended section 270 but to fully understand section 270 one must also read sections 269 and 270 in unison, including the entire *Municipal Act* and in particular sections 10 and 11.<sup>10</sup>

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payment of the same dues, as are at the time payable by the holders of licenses to cut timber or saw logs. All trees remaining on the land at the time the Patent issues, shall pass to the Patentee.”

<sup>9</sup> **Conflict re: tree by-laws 461.** (1) If, on January 1, 2003, there is a conflict between an upper-tier by-law and a lower-tier by-law relating to the regulation or prohibition of the destruction or injuring of trees, the by-law that is the most restrictive of the destruction or injuring of trees prevails. 2001, c. 25, s. 461.  
**By-laws made after December 31, 2002** (2) Subsection (1) does not apply to a conflict between a by-law of an upper-tier municipality passed after December 31, 2002 under this Act and a by-law of a lower-tier municipality passed after December 31, 2002 under this Act. 2002, c. 17, Sched. A, s. 87.

<sup>10</sup> 10/11. (1) A lower-tier municipality and an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection (4). 2006, c. 32, Sched. A, s. 8.

### **By-laws**

(2) A single-tier municipality may pass by-laws respecting the following matters:

**4. Public assets<sup>3</sup> of the municipality acquired for the purpose of exercising its authority under this or any other Act.**

(“municipal property asset” means an asset of the municipality that is land, equipment or other goods. O. Reg. 599/06, s. 14 (2).

“economic development services” means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses; )  
*Municipal Act*, 2001, S.O. 2001, CHAPTER 25

Section 269<sup>11</sup> is the interpretation, in regards to policies, for this part, including section 270. It expresses that a “local board” means “a municipal service board, transportation commission, public library board, board of health, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities,” “a local services board, a local roads board and any other board, commission or local authority exercising any power with respect to municipal affairs or purposes in unorganized territory, excluding a school board, a hospital board and a conservation authority,” “a district social services administration board,” “a local housing corporation as defined in the *Housing Services Act, 2011*, despite clause 26 (b) of that Act,” and “any other prescribed body performing a public function” “excluding a police services board and a hospital board.”

Section 270 (1)<sup>12</sup> instructs municipalities to adopt and maintain policies regarding public properties; hiring of employees; relationships between council, officers of the municipal

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#### <sup>11</sup> Interpretation

**269 (1)** In section 270,

“local board” means,

(a) a local board as defined in section 1,<sup>11</sup> excluding a police services board and a hospital board,

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) of the definition of “local board” in subsection 269 (1) of the Act is amended by striking out “police services board” and substituting “police service board”. (See: 2019, c. 1, Sched. 4, s. 33 (10))**

(b) a local services board, a local roads board and any other board, commission or local authority exercising any power with respect to municipal affairs or purposes in unorganized territory, excluding a school board, a hospital board and a conservation authority,

(c) a district social services administration board,

(d) a local housing corporation as defined in the *Housing Services Act, 2011*, despite clause 26 (b) of that Act, and

(e) any other prescribed body performing a public function. 2001, c. 25, s. 269 (1); 2006, c. 32, Sched. A, s. 112; 2011, c. 6, Sched. 1, s. 187 (3); 2019, c. 14, Sched. 7, s. 14 (2).

#### **Regulations**

(2) The Minister may make regulations prescribing bodies which fall within the definition of “local board” in subsection (1). 2001, c. 25, s. 269 (2).

#### <sup>12</sup> POLICIES

##### **Adoption of policies**

**270 (1)** A municipality shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.
- 2.1 The relationship between members of council and the officers and employees of the municipality.
3. Its procurement of goods and services.
4. The circumstances in which the municipality shall provide notice to the public and, if notice is to be provided, the form, manner and times notice shall be given.
5. The manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public.
6. The delegation of its powers and duties.
7. The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.

corporation and municipal employees; the procurement of goods and services; notice that is to be given to the residents including dates, times, etc.; municipal accountability and transparency so residents can have trust and confidence in the municipal council;<sup>13</sup> delegation of powers; how the municipality will protect the tree canopy and natural vegetation on municipal public property, pregnancy leaves and parental leaves of members of council.

270 (2)<sup>14</sup> instructs local boards in/of (created by and/or belonging to) the municipality to adopt and maintain policies regarding its sale and other disposition of land; hiring of employees; its procurement of goods and services.

The Courts have determined that policy is not law it is a guideline to follow.<sup>15</sup> Section 270, it would seem, does nothing to support a municipality which may attempt to restrict and/or regulate trees/vegetation not belonging to the municipality or trees/vegetation which are not on public lands/property.

Public Property is defined as:

**“PUBLIC PROPERTY** – State or community owned property not restricted to any one individual’s use or possession.”<sup>16</sup>

Whereas Private Property is defined as:

**“PRIVATE PROPERTY** – Property – protected from public appropriation – over which the owner has exclusive and absolute rights.”<sup>17</sup>

What has been determined is that the *Municipal Act*, sections 135 (1), (4), (5), (12), section 141, sections 269, 270, section 394 (e), and section 461, raise questions as to

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8. Pregnancy leaves and parental leaves of members of council. 2006, c. 32, Sched. A, s. 113; 2017, c. 10, Sched. 1, s. 32.

<sup>13</sup> “<sup>17</sup> The Code of Conduct should state that Council members must perform their duties with integrity, objectivity, transparency, and accountability to promote public trust and confidence. The public is entitled to expect the highest standards of conduct from the individuals they elect to local government ...” Transparency and the Public Trust, Report of the Collingwood Judicial Inquiry Vol. IV, Associate Chief Justice Frank N. Marrocco, Commissioner. <https://collingwoodinquiry.ca/report/index.html>

<sup>14</sup> **Policies of local boards**

270 (2) A local board shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.
3. Its procurement of goods and services. 2006, c. 32, Sched. A, s. 113.

**Section Amendments with date in force (d/m/y)**

<sup>15</sup> “... that policy or guideline is not prescribed by law. It is simply that; it is MNR guidelines for enforcing the Act and, as such, it cannot be relied upon as the law.”

Ministry of Natural Resources v. Janssen, Reasons for Judgment - February 12, 2015.

<sup>16</sup> Black’s Law Dictionary, 9<sup>th</sup> Edition, 2009, p. 1337

<sup>17</sup> Black’s Law Dictionary, 9<sup>th</sup> Edition, 2009, p. 1337

the authority that either tier municipality may exercise in regards to a trees/vegetation preservation/cutting by-law(s) on (i) private property not public property, and (ii) and under various other Acts.

## THE FORESTRY ACT

The first Ontario *Forestry Act*,<sup>18</sup> through to the present Act,<sup>19</sup> established that the trees on private property must first be acquired by the Province and in later statutes, a municipality, or an agreement entered into with the private property owner before the governing body can exercise authority over tree resources and/or conservation.<sup>20</sup> In

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<sup>18</sup> The Forestry Act, Ch. 41, 1927, The Forestry Act, Ch. 39, 1937, The Forestry Act, Ch. 147, 1950.

<sup>19</sup> The Forestry Act, Ch. 41, 1927, The Forestry Act, Ch. 39, 1937, The Forestry Act, Ch. 147, 1950, The Forestry Act, Ch. 153, 1960, The Forestry Act, Ch. 181, 1970, Forestry Act, Ch. 175, 1980, Forestry Act, Ch. 26, 1990.

<sup>20</sup> "Despite the consensus which developed at the hearing, I found it useful to understand the proper scope of the Trees Act. Its legislative history is informative. In 1896, the Ontario Tree Planting Act, 1896, S.O. 1896, c. 60, was enacted. It was an Act revising and consolidating the Acts to encourage the planting and growing of trees. That legislation contained provisions almost identical in wording to the current ss. 2 and 3 of the Trees Act but they were part of a general context which has since disappeared. The 1896 legislation allowed for municipal grants to support the planting of trees along highways, public lanes, alleys, places or squares or on the boundaries of adjacent farms or lots. It also provided for the ownership in such trees: they would belong to the owner of the land adjacent to the highway or lane in the first case, and they would be the common property of both land owners in the case of trees planted on boundary lines with both consents.

Interestingly, s. 3(2) then provided as follows:

3(2) Such by-law may further provide for the appointment of an inspector of trees so planted; for their due protection against injury and against removal by any person or persons, including the owner, excepting as authority may be given therefor by special resolution of the council; for the conditions on which bonuses may be paid, and generally for such regulations as are authorized by sub-sections 20 and 20a of section 479 of The Consolidated Municipal Act, 1892.

(Emphasis added.) In the same Act of 1896, s. 6 made it an offence, in language very similar to the current s. 3 of the Trees Act, for any person to cut down or remove any tree planted on a boundary line and for which a bonus or grant had been paid by the municipality. The combination of these two provisions made it abundantly clear that s. 6 -- which later became s. 3 -- did not apply to the owners of the tree planted on the boundary line. Their right to remove the trees were specifically governed by s. 3(2) and was subservient to the interest of the municipality which had invested in those trees.

No change of any significance was made to this 1896 statute though the various revisions or consolidations until 1950, where the Trees Act, R.S.O. 1950, c. 399, was enacted substantially in its present form. That statute amalgamated the Trees Conservation Act, 1946, S.O. 1946, c. 102 and the Tree Planting Act, R.S.O. 1937, c. 292. In that process, only the current s. 2 and s. 3 remained of what had been the much more comprehensive Tree Planting Act.

The legislative history of the Trees Act confirms that s. 3 does not apply to the owner of a tree growing on a boundary line who cuts the tree down. Furthermore, the provision which existed from 1877 to 1950 preventing the owner from cutting down such a tree without the consent of the municipality, has not been in existence since 1950. It would therefore appear that there are no restrictions to the right of a landowner to cut down trees growing on the boundary line, apart from the restrictions that exist at common law, if any....

Although there is a dearth of authorities on the proprietary rights of landowners with respect to trees growing on boundary lines, the respective rights of adjacent landowners are fairly well established in so far as trees growing on their respective properties are concerned. It would seem to me to be a fair

other words, as stated in *Centrum Land Corp. v. Institute of Chartered Accountants of Ontario* (H.C.J.), 1988 CanLII 4823 (ON SC), if the province or a municipality invested funds in said trees the owner would need to seek consent from the authority involved to remove the trees:

“The 1896 legislation allowed for municipal grants to support the planting of trees along highways, public lanes, alleys, places or squares or on the boundaries of adjacent farms or lots. It also provided for the ownership in such trees: they would belong to the owner of the land adjacent to the highway or lane in the first case, and they would be the common property of both land owners in the case of trees planted on boundary lines with both consents.

Interestingly, s. 3(2) then provided as follows:

3(2) Such by-law may further provide for the appointment of an inspector of trees so planted; for their due protection against injury and against removal by any person or persons, including the owner, excepting as authority may be given therefor by special resolution of the council; for the conditions on which bonuses may be paid, and generally for such regulations as are authorized by sub-sections 20 and 20a of section 479 of The Consolidated Municipal Act, 1892.

(Emphasis added.) In the same Act of 1896, s. 6 made it an offence, in language very similar to the current s. 3 of the Trees Act, for any person to cut down or remove any tree planted on a boundary line and for which a bonus or grant had been paid by the municipality. The combination of these two provisions made it abundantly clear that s. 6 -- which later became s. 3 -- did not apply to the owners

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analysis of the problem in this case to examine the situation that the Institute would be in if the trees which will be affected by its construction project were entirely on Centrum's land. To put it another way, I would have thought that Centrum could have no greater right in the trees on the boundary line than it would have if the trees were completely on its land.

If this were the case, the Institute would clearly be entitled, in my opinion, to remove any branches or roots of such trees which interfere with the peaceful enjoyment of its property, including the right to build on it within an inch of the boundary line: see 4 Hals., 4th ed., pp. 381-3, paras. 873-874. If the tree is so close to the boundary line that the cutting back of the offending branches or roots is likely to jeopardize the ability of the tree to survive the cut, I was referred to no authority which suggests that the adjacent owner must then suffer the nuisance. I agree with the disposition of *Graham v. Da Silva* which imposed no such limitations in similar circumstances.

It goes without saying that if the trees in this case were located entirely on the Institute's land, they could be removed by the Institute despite their shade and ornamental value to the plaintiff's tenant. If the trees were located entirely on Centrum's land, the Institute could remove any part of them which would interfere with its construction plans. Absent the provisions of the Trees Act, which clearly do not apply in this case, I cannot see how the situation can be different merely because the trees happen to grow on the boundary line.

Consequently, the plaintiff has failed to show that it has a proprietary right in the trees and the motion for a permanent injunction is dismissed. There are two subsidiary issues which were argued but which I do not need to address in relation to these proceedings. The first deals with whether or not Centrum or its antecedent in title moved with sufficient speed against the Institute to justify at this stage the issuance of an injunction as sought. The second issue deals with whether or not Centrum must come before the court with clean hands, that is with no ulterior motive other than its alleged interest in the trees.”

*Centrum Land Corp. v. Institute of Chartered Accountants of Ontario* (H.C.J.), 1988 CanLII 4823 (ON SC)

of the tree planted on the boundary line. Their right to remove the trees were specifically governed by s. 3(2) and was subservient to the interest of the municipality which had invested in those trees.

No change of any significance was made to this 1896 statute though the various revisions or consolidations until 1950, where the Trees Act, R.S.O. 1950, c. 399, was enacted substantially in its present form. That statute amalgamated the Trees Conservation Act, 1946, S.O. 1946, c. 102 and the Tree Planting Act, R.S.O. 1937, c. 292. In that process, only the current s. 2 and s. 3 remained of what had been the much more comprehensive Tree Planting Act.”<sup>21</sup>

The agreement between the property owner and the governing entity must be registered on Title by the property owner. There are sections in the *Forestry Act* where the Minister may enter into agreement with Municipalities and/or Conservation Authorities regarding these two entities receiving grants and assistance in the planting of trees on their own properties.<sup>22</sup>

In 1998 under The *Red Tape Reduction Act*, Ch. 18,<sup>23</sup> amended the *Forestry Act* by means of repealing of the *Trees Act* and the *Woodlands Improvement Act*. The amendments to the *Forestry Act* maintained the criteria that agreements must be entered into prior to any inspection and/or enforcement of trees situated on private property. The *Forestry Act* authorizes municipalities to pass by-laws to acquire land to plant trees.<sup>24</sup>

There are sections pertaining to “boundary trees” between abutting property owners,<sup>25</sup> of which may or may not include municipal tree cutting by-laws as this is an agreement between abutting property owners,<sup>26</sup> whereas the municipalities have by-law enforcement on public municipal property as long as a lower tier does not interfere with an upper tier’s authority.<sup>27</sup>

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<sup>21</sup> *Centrum Land Corp. v. Institute of Chartered Accountants of Ontario* (H.C.J.), 1988 CanLII 4823 (ON SC)

<sup>22</sup> The *Forestry Act*, Ch. 41, 1927, The *Forestry Act*, Ch. 39, 1937, The *Forestry Act*, Ch. 147, 1950, The *Forestry Act*, Ch. 153, 1960, The *Forestry Act*, Ch. 181, 1970, *Forestry Act*, Ch. 175, 1980, *Forestry Act*, Ch. 26, 1990.

<sup>23</sup> *Red Tape Reduction Act*, Ch. 18, 1998, Schedule I – Amendments and Repeals proposed by the Ministry of Natural Resources.

<sup>24</sup> *Red Tape Reduction Act*, Ch. 18, 1998, Schedule I – Amendments and Repeals proposed by the Ministry of Natural Resources.

<sup>25</sup> *Red Tape Reduction Act*, Ch. 18, 1998, Schedule I – Amendments and Repeals proposed by the Ministry of Natural Resources.

<sup>26</sup> *Davis v Sutton*, 2017 ONSC 2277 – see not below

<sup>27</sup> “14. Section 14 indicates that a by-law is without effect to the extent of any conflict with a provincial or federal act. If the road allowance should be considered a highway, it could be said that joint jurisdiction requires both municipalities to pass a by-law and without that, a conflict with the Municipal Act could be perceived. However, the provisions of section 14(2) cause me to consider whether the lack of one of the joint jurisdiction municipalities to pass a by-law actually frustrates the purpose of the Municipal Act. It is possible to comply with the City of Owen Sound By-Law without committing an offence against the Municipal Act or any other legislation. *Further the Owen Sound By-Law appears to be consistent with the*

Section 2 of the present Forestry Act<sup>28</sup> expresses that the Minister may enter into agreements with private property owners for the management and/or improvement of the land. Section 2 (2)<sup>29</sup> expresses that the Minister may make grants to, any conservation authority or municipality for the purpose of either corporations' acquisition of land for forestry purposes. Section 2 (3)<sup>30</sup> states that any land that the conservation authorities or municipalities, or their predecessors, have received grants for must be used for forestry purposes only and sub-section (4)<sup>31</sup> demands repayment from the conservation authorities and the municipalities if they use the lands for any other purpose. Sub-sections (5), (6) and (7)<sup>32</sup> regulate that the lands for which grants had been made cannot be sold, leased or disposed of unless approved by the Minister before the term of the agreement is fulfilled, saving that the Province may sell, lease or dispose of the land for the use of the Province.

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*intent of the Municipal Act to allow municipalities to have control over their own property, so I do not believe the by-law frustrates the purpose of the Municipal Act.*

3: Decision. 16. The evidence presented to the court established that Raymond Bumstead did intentionally cut or remove trees contrary to section 8.3 of the City of Owen Sound By-law 1994-020 as amended. Despite any restrictions on the jurisdiction of the City of Owen Sound over a highway imposed by section 27(2) of the Municipal Act, I find that the other, previously referenced, provisions of the Act preserve the authority of the City of Owen Sound to control the cutting of trees in the road allowance and the by-law is capable of enforcement. As a result there will be a conviction for the offence charged." *Owen Sound (City) v. Bumstead*, 2008 ONCJ 760 (CanLII)

<sup>28</sup> Agreements re forestry development, 2. (1) The Minister may enter into agreements with owners of land suitable for forestry purposes that provide for the management or improvement of the land for these purposes upon such conditions as the Minister considers proper. 1998, c. 18, Sched. I, s. 20.

<sup>29</sup> Grants (2) The Minister may make grants of the sums provided for in the agreement, on such conditions as the Minister considers appropriate, out of the money appropriated by the Legislature to any conservation authority or municipality for the purpose of assisting it in the acquisition of land that is suitable for forestry purposes and that is to be managed under an agreement. 1998, c. 18, Sched. I, s. 20.

<sup>30</sup> Forestry purposes only (3) A conservation authority or municipality that has entered into an agreement under subsection (1) or a predecessor provision shall not, without the approval of the Minister, use any land in respect of which grants have been made under subsection (2) or a predecessor provision for any purpose that is inconsistent with forestry purposes at any time during or after the term of the agreement. 1998, c. 18, Sched. I, s. 20.

<sup>31</sup> Repayment (4) A conservation authority or municipality that uses land covered by an agreement authorized under subsection (1) or a predecessor provision for a purpose that is inconsistent with forestry purposes shall repay to the Province of Ontario all grants that it received under the agreement to acquire the land unless the Minister provides that the grants need not be repaid. 1998, c. 18, Sched. I, s. 20.

<sup>32</sup> Sale of land (5) Land in respect of which grants have been made under subsection (2) or a predecessor provision shall not, without the approval of the Minister, be sold, leased or otherwise disposed of during or after the term of the agreement. 1998, c. 18, Sched. I, s. 20. Proceeds shared (6) The proceeds from any sale, lease or other disposition of land in respect of which grants have been made under subsection (2) or a predecessor provision shall be divided as the Minister directs between the conservation authority or municipality, as the case may be, and the Province of Ontario, with the conservation authority or municipality receiving not less than 50 per cent of the proceeds. 2000, c. 26, Sched. L, s. 4 (2). Exception (7) Subsection (6) does not apply to a sale, lease or other disposition for the use of the Province of Ontario. 1998, c. 18, Sched. I, s. 20.

Section 3<sup>33</sup> of the Forestry Act states that an agreement entered into between the province and the private property owner is to be registered by the owner of the land in the property registry office and is binding on successors-in-title for the term of the agreement. Section 4<sup>34</sup> pertains to the Woodlands Improvement Act, of which agreements had been made. The Woodlands Improvement Act was repealed in 1998,<sup>35</sup> but any such agreements would continue. Under section 5<sup>36</sup> the Minister may create programs for the encouragement of good forestry practices and under section 6<sup>37</sup> is protection for nursery stock, which has or is provided by the province, not to be sold, gifted or destroyed.

During a time of infestation, the Minister may direct at the cost of the Crown, measures to eradicate such infestations. Under this purview, for the protection of the Forest Industry and the Crown Forests, officers may enter onto any land between sunrise and sunset to inspect for infestations.<sup>38</sup> For any other reason, unless there has been an agreement with the private property owner would be trespass and/or a forcible entry, under the Criminal Code.

Section 10<sup>39</sup> of the Forestry Act explains that two owners of abutting properties may plant boundary trees and they become the property of both neighbors. The only persons that may injure or destroy these trees are the owners of the properties that are

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<sup>33</sup> Registration of agreements 3. The Minister may direct that an agreement entered into under section 2 shall be registered by the owner of the land in respect of which the agreement is made in the proper land registry office, and thereupon such agreement is binding upon and inures to the benefit of every successor-in-title to such owner during the term of the agreement. R.S.O. 1990, c. F.26, s. 3.

<sup>34</sup> Woodlands improvement agreements 4. An Agreement made under the *Woodlands Improvement Act* shall be deemed to be an agreement made under section 2. 1998, c. 18, Sched. I, s. 21.

<sup>35</sup> Woodlands Improvement Act, R.S.O. 1990, CHAPTER W.10, Note: This Act was repealed on December 18, 1998. See: 1998, c. 18, Sched. I, s. 65.

<sup>36</sup> Programs 5. The Minister may establish programs to protect, manage or establish woodlands and to encourage forestry that is consistent with good forestry practices. 2002, c. 17, Sched. C, s. 12 (2).

<sup>37</sup> Nursery stock 6. No person shall, directly or indirectly, sell or offer for sale or dispose of by gift or otherwise any nursery stock furnished by the Ministry under this Act. 1998, c. 18, Sched. I, s. 21.

<sup>38</sup> Control measures 7. If, in the opinion of the Minister, the control of an infestation on any land is in the public interest, the Minister may direct an officer to enter upon the land and, at the expense of the Crown, take such measures to prevent, retard, suppress, eradicate or destroy the infestation as the officer considers advisable. 1998, c. 18, Sched. I, s. 21. Powers of entry 8. An officer, with or without the consent of the owner, may enter upon any land between sunrise and sunset to inspect the land and its trees and forest products for infestation and to survey and examine the timber and other natural resources on the land in order to determine the suitability of the land for forestry purposes. 1998, c. 18, Sched. I, s. 21. Obstruction of officers 9. No person shall obstruct an officer in the performance of his or her duty. 1998, c. 18, Sched. I, s. 21.

<sup>39</sup> Boundary trees 10. (1) An owner of land may, with the consent of the owner of adjoining land, plant trees on the boundary between the two lands. 1998, c. 18, Sched. I, s. 21. Trees common property (2) Every tree whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining lands. 1998, c. 18, Sched. I, s. 21. Offence (3) Every person who injures or destroys a tree growing on the boundary between adjoining lands without the consent of the land owners is guilty of an offence under this Act. 1998, c. 18, Sched. I, s. 21.

abutting and/or permission must be obtained from both owners for someone else to injure or destroy the trees. That would include farm fence line trees.

Section 11<sup>40</sup> provides that Municipalities may make by-laws for acquiring land for forestry purposes, declaring land owned by the municipality for forestry purposes, planting and protecting trees on land acquired for forestry purposes, for the management of land acquired for forestry purposes and for the sale or disposition of the trees, for issuing debentures for purchasing land for forestry purposes to an amount prescribed by the Minister, for entering into agreements for the management of the land acquired for forestry purposes, and for the leasing, selling or disposing of the land acquired for forestry purposes. It would seem that any other by-laws created outside of this criteria, would be in conflict with the Forestry Act, in conflict with good forestry practices and beyond the authority of the municipalities, in regards to permits, license, etc.

Sub-section (2), (3), (4)<sup>41</sup> and (5) of section 11 express that one municipality may acquire land in another municipality for forestry and that there may be payment in lieu of taxes and that these amounts cannot be more than what the taxes would be worth. It also stipulates that the Minister may make regulations in regards to the amount of sub-section (3). Sub-section (5)<sup>42</sup> refers to the Trees Act and section 9 immediately before it was repealed and although repealed, by-laws in regards to it, continue.

It would seem that section 135 of the Municipal Act is merely an extension of section 12<sup>43</sup> of the Forestry Act, as the Municipalities may create by-laws for their “public

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<sup>40</sup> By-laws for acquiring lands for forestry purposes 11. (1) The council of a municipality may pass by-laws, (a) for acquiring by purchase, lease or otherwise, land for forestry purposes; (b) for declaring land that is owned by the municipality to be required by the municipality for forestry purposes; (c) for planting and protecting trees on any land acquired for or declared to be required for forestry purposes; (d) for the management of any land acquired for or declared to be required for forestry purposes and the sale or other disposition of the trees thereon; (e) for issuing debentures, without the assent of the electors, for the purpose of purchasing land for forestry purposes to an amount not exceeding the amount prescribed by the Minister to be owing at any one time; (f) for entering into agreements for the management of any land acquired for or declared to be required for forestry purposes; (g) for leasing, selling or otherwise disposing of any land acquired for or declared to be required for forestry purposes. 2002, c. 17, Sched. C, s. 12 (3).

<sup>41</sup> Land in another municipality (2) Land may be acquired under subsection (1) in another municipality with the consent of the council of that municipality. 2002, c. 17, Sched. C, s. 12 (3). Payment in lieu of taxes (3) If a municipality acquires land or declares land to be required for forestry purposes in another municipality under this section, the council of the first-mentioned municipality may agree to pay annually to the municipality in which the land is situate a sum not exceeding the amount that would have been payable to the municipality as taxes if the land were not exempt from taxation. 2002, c. 17, Sched. C, s. 12 (3). Regulations (4) The Minister may make regulations prescribing the amount under clause (1) (e). 2002, c. 17, Sched. C, s. 12 (3).

<sup>42</sup> Application for minor exceptions (5) Despite the repeal of the *Trees Act*, section 9 of that Act, as it read immediately before its repeal, continues to apply in respect of by-laws passed under that Act before December 18, 1998. 2002, c. 17, Sched. C, s. 12 (3).

<sup>43</sup> Agreements for forestry purposes 12. (1) The council of any municipality may enter into agreements with the owners of land located in the municipality providing for, (a) the reforestation of portions of the

properties”;<sup>44</sup> enter into agreements with private property owners prior to any demands for permits, fees, fines or restoration orders being passed through by-laws. Regards to the Forestry Act, as it has been referenced that the Municipalities must follow good forestry practices, involves following the Forestry Act and provincial legislation. Which section 394 (e), of the Municipal Act references, regarding natural resources.

In these agreements, of which by-laws subscribing to the Forestry Act, the Municipalities may offer to pay for trees to be planted and/or a reduction in property taxes to the private property owner, but these agreements must be acceptable to both the private property owner and the municipality, without third party interference. Any demand for permits, licenses, etc., through legislated dictates, third party environmental groups or NGOs recommendations, and/or promotion by conservation authorities, is using the municipalities, as a tool, to do indirectly what cannot be done directly.<sup>45</sup> And as the conservation authorities may enter into their own agreements with private property owners under section 21 of the Conservation Authorities Act, which includes the Conservation Land Act,<sup>46</sup> there is no need for them to assist municipalities, in regards this tree cutting by-laws.

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land; (b) the entry and planting of trees upon such portions by the employees or agents of the council; and (c) the fencing of the portions and conservation of all growing trees thereon by the owner. 2002, c. 17, Sched. C, s. 12 (4). Acreage (2) No agreement shall provide for the reforestation of less than five acres of land for every 100 acres belonging to the same owner. 2002, c. 17, Sched. C, s. 12 (4). Cutting (3) Every agreement shall prescribe the conditions under which the cutting of timber upon the portions may be carried out. 2002, c. 17, Sched. C, s. 12 (4). Exemption from taxation (4) The council of the municipality may exempt any portion from general taxation as long as it continues to be used for the purposes set out in the agreement. 2002, c. 17, Sched. C, s. 12 (4).

<sup>44</sup> **PUBLIC PROPERTY** – State or community owned property not restricted to any one individual’s use or possession. Black’s Law Dictionary, 9<sup>th</sup> Edition, 2009, p. 1337.

<sup>45</sup> *“What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.”* [G.R. No. 166471, March 22, 2011], TAWANG MULTI-PURPOSE COOPERATIVE, PETITIONER, VS. LA TRINIDAD WATER DISTRICT, RESPONDENT.

<sup>46</sup> Conservation Land Act, R.S.O. 1990, CHAPTER C.28

## PUBLIC LANDS ACT

Another statute that must also be considered, when municipal councils decide to implement regulatory by-laws, is the Public Lands Act. This is the Act that regulates the Letters Patent. In the Letters Patent, issued under this act, there may be reservations for certain trees for the use of the Crown. Under section 57<sup>47</sup> of this act it states that until the issuance of the Letters Patent, the trees on agricultural property remain the property of the Crown, but when the Letters Patent are issued, the trees become the property of the patentee (private property owner).

57 (2)<sup>48</sup> During the settlement period, prior to the letters patent being issued, the locate/occupier (pre-patent user of the land) may use the trees and dispose of the trees, but only those required for clearing the land for cultivation, for the construction of fences and constructing buildings. And until the letters patent are issued, all clear cutting is to authorized by an officer of the Minister.

Under 57 (3)<sup>49</sup> any trees sold or used for trade must be paid for, the same as any licensee for timber, to the Minister unless he exempts this restriction in writing. 57 (4)<sup>50</sup> if at the time of issuance there is a timber license open and able to be implemented on a patentee's land, in regards to agricultural, the Minister shall revoke the timber license and compensate the owner of the licence of that timber right, that has been revoked.

Under section 58<sup>51</sup> of the Public Lands Act, all trees become the property of the patentee, particularly if the property is going to be used for agricultural purposes and

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<sup>47</sup> Reservation of trees 57. (1) All trees on land that has been disposed of under this Act for agricultural purposes remain the property of the Crown until the issuance of letters patent, whereupon the property in such trees passes to the patentee. R.S.O. 1990, c. P.43, s. 57 (1).

<sup>48</sup> Cutting rights of settlers before patent (2) During the time the trees on land that has been disposed of under this Act for agricultural purposes remain the property of the Crown, the purchaser or locatee of such land or anyone claiming under the purchaser or locatee may cut and use all such trees as are necessary for building on and fencing such land, and may cut and dispose of all such trees required to be removed in clearing the land for cultivation, but no trees except those necessary for such building and fencing shall be cut beyond the limit of the actual clearing without the consent in writing of an officer authorized by the Minister for the purpose. R.S.O. 1990, c. P.43, s. 57 (2).

<sup>49</sup> Payment of Crown dues (3) All trees cut under subsection (2) and sold or bartered are subject to the payment of the same charges as are at the time payable by the holders of licences to cut timber, unless the Minister otherwise directs in writing. R.S.O. 1990, c. P.43, s. 57 (3).

<sup>50</sup> Revocation of timber licences on settlers' land (4) Where land is disposed of under this Act for agricultural purposes and a licence to cut timber on such land is subsisting at the time the disposition is made, the licence shall be deemed to be revoked in respect of such land, and in any such case the Minister may compensate the holder of such licence by granting the holder a licence to cut timber elsewhere. R.S.O. 1990, c. P.43, s. 57 (4).

<sup>51</sup> Property in trees vested in patentee 58. (1) Where land is disposed of under this Act for agricultural purposes, the property in all trees thereon shall be deemed to have passed to the patentee by the letters

reservations under this act for any class or kind of tree contained in the letters patent shall be deemed void. Subsection (2)<sup>52</sup> expresses that the same voidance of the reservations, under this act, is also for property known as summer resort location. 58 (3)<sup>53</sup> expresses that any reservations for trees in letters patent prior to April 1869, are also void and summer resort locations reservations and any penalties are also void under sub-section (4)<sup>54</sup>. In regards to these voidances, one should always side on the side of caution and uphold the reservations of the Crown, as this is the writing of the Sovereign, Sealed with the Great Seal and one wouldn't want to place the Crown in disrepute, particularly when one had sworn an oath to uphold the Crown. Sub-section (6)<sup>55</sup> of 58 expresses that if public/Crown land has been alienated or disposed of by the Crown under this or any other Act, any species of trees on those lands alienated and reserved to the Crown but no timber license had been issued or hadn't been reserved and no timber license had been issued, the Minister, to acquire those trees, may pay for those trees a price that the Minister considers proper.

So again, when the municipality creates a by-law that demands permits, licenses, fees and prescribes fines, may be *ultra vires* of the municipality as it interferes with another superior Act.

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patent, and every reservation of any class or kind of tree contained in the letters patent shall be deemed to be void. R.S.O. 1990, c. P.43, s. 58 (1).

<sup>52</sup> Reservations of trees voided (2) A reservation of all timber and trees or any class or kind of tree contained in letters patent granting public lands disposed of under this or any other Act for a summer resort location is void. R.S.O. 1990, c. P.43, s. 58 (2).

<sup>53</sup> Idem (3) A reservation of all timber and trees or any class or kind of tree contained in letters patent dated on or before the 1st day of April, 1869 and granting public lands disposed of under this or any other Act is void. R.S.O. 1990, c. P.43, s. 58 (3).

<sup>54</sup> Idem (4) Every provision contained in letters patent granting public lands for a summer resort location that, (a) prohibits the cutting of pine timber, except for necessary building or clearing with the written permission of the Minister, and, in default, sets out penalties and exacts prices for cut timber; or (b) provides for the manner of disposal of cut timber, is void. R.S.O. 1990, c. P.43, s. 58 (4). (5) Repealed: 1994, c. 25, s. 85.

<sup>55</sup> Acquisition or release of trees (6) If public lands have been disposed of by the Crown under this or any other Act and some or all of the species of trees on the lands have been reserved to the Crown and are not under timber licence, the Minister may acquire any species of trees not so reserved or release any species of trees so reserved at such price and on such terms and conditions as the Minister considers proper. 2001, c. 9, Sched. K, s. 5 (3).

## PROPERTY AND CIVIL RIGHTS ACT

Most certainly there will be comment regarding section 92 (13) – *Property and Civil Rights in the Province*, of the 1867 Constitution. There needs to be explanation or an incorrect interpretation may be brought forward. As expressed in a number of cases this is not carte blanc legislative authority by the provinces over all property nor citizens civil liberties. As described by Prof. H. Irving, in *Comparative Constitutional Law* (U.S./Canada/Australia), 2009”:

“An appreciation of Canadian federalism requires a brief historic overview of the significance of the concept of “property and civil rights.” The phrase includes all laws governing the relationships between individuals (most generally covered by the law of property, contracts, and torts), as opposed to the law which governs the relationship between citizens and government.”

The *Property and Civil Rights Act* is one paragraph. It declares the following:

Property and Civil Rights Act, R.S.O. 1990, CHAPTER P.29

Consolidation Period: From December 31, 1990 to the e-Laws currency date.

No amendments.

Rule of decision

1. In all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as they stood on the 15th day of October, 1792, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the courts of Ontario shall be regulated by the rules of evidence established in England, as they existed on that day, except so far as such laws and rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament, still having the force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, still having the force of law in Ontario. R.S.O. 1990, c. P.29, s. 1.<sup>56</sup>

In regards to the laws of England in 1792, the Imperial Act known as “*An Act to repeal certain Parts of an Act, passed in the fourteenth Year of his Majesty's Reign, intituled, An Act for making more effectual Provision for the Government of the Province of Quebec, in North America; and to make further Provision for the Government of the said Province, 31 Geo. III, c. 31 (U.K.)*” created the two provinces of Upper and Lower Canada and during the creation of these two different provinces a new constitution was

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<sup>56</sup> Elaws - <https://www.ontario.ca/laws/statute/90p29>

enacted bringing the same laws of England to these provinces in regards to property and civil rights. And under 31 Geo. III, c. 82, Section IX of this act specifically states:

IX. Provided always, That nothing in this act contained shall extend, or be construed to extend, to any lands that have been granted by his Majesty, or shall hereafter be granted by his Majesty, his heirs and successors, to be holden in free and common socage<sup>57</sup>.<sup>58</sup>

A definition of “free and common socage” is:

“Freehold tenure is without any incidents or obligations for the benefit of the Crown. All lands granted by the Crown in fee simple are granted in free and common socage - freehold tenure.

A fee simple may be transferred without licence or fine and the new owner holds from the Crown in the same manner as the previous tenant held from the Crown.”<sup>59</sup>

With bringing the laws of England to the 2 provinces through the Constitution of 1792, and as it is specifically stated that it is to be the laws of England that pertain to property and civil rights, it would seem that the intent of the “Property and Civil Rights Act” of Ontario was to ensure that all private property is protected from overzealous legislation, regulations and/or bylaws, and again it would seem that a by-law demanding permits, licenses, fees and eventual fines is in conflict with a superior act.

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<sup>57</sup> FREE SOCAGE – Socage in which the services were both certain and honorable. By the statute 12 Car. 2. ch. 24 (1660), all tenures by knight service were, with minor exceptions, converted into free socage. Black’s Law Dictionary, 9<sup>th</sup> Edition, 2009. Section 22 of the British North America Act, 1867: (3.) He shall be legally or equitably seized as of free-hold for his own use and benefit of Lands or Tenements held in Free and Common Socage or seized or possessed for his own use and benefit of Lands or Tenements held in Francalieu or in Roture, within the Province for which he is appointed... FREEHOLD – Such an interest in lands of frank-tenement as may endure not only during the owner’s life, but which is cast after his death upon the persons who successively represent him, according to certain rules elsewhere explained. Such persons are called heirs, and he whom they thus represent, the ancestor. When the interest extends beyond the ancestor’s life, it is a freehold of inheritance, and when it only endures for the ancestor’s life, it is a freehold not of inheritance. An estate to be a freehold, must possess these two qualities: 1. Immobility, that is, the property must be either land, or some interest issuing out of or annexed to land; and, 2. a sufficient legal indeterminate duration; for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold. Dictionary of Jurisprudence, J.J.S. Wharton, Esq., 1847-48, pg. 268.

<sup>58</sup> The Statutes of The Province of Upper Canada; together with such British Statutes, Ordinances of Quebec, and Proclamations, as Relate to the Said Province. Revised and Printed for, and Published by Hugh C. Thomson and James MacFarlane. Revised by James Nickalls, Junior, Esquire, Barrister at Law. Kingston, U.C. Printed by Francis M. Hill. 1831, p. 8

<sup>59</sup> Ownership and Title to Real Property, <http://lawstudies.wikidot.com/laws3112-lecture-3>

## THE BRITISH NORTH AMERICA ACT, 1867

Section 92 (13) has been discussed above.

Under Sections 92 (5) *“The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon”*, and Section 109 – *“Property in Lands, Mines, etc. 109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.”*

The Province is to receive the royalties from the management of public lands, including the timber and wood for revenues for the Consolidated Revenue Fund. It is also to receive the royalties from section 109, again for the support of the payment of the civil lists, subject any trusts or interests not of the Crown or the province. The Trusts and interests not of the province is the private property that has already been alienated from the Crown. This can only be determined through the Letters Patent, as they too, are constitutional documents and pertain to sections 92 (5) and section 109. Municipalities may pass by-laws in regards to the management of the public lands and timber/wood that is owned by the municipalities for forestry use, and may license and/or require permits for those purposes, but in regards to private property the private property owner is the entity who is to issue permits and/or licenses, for any forest and/or tree management on their own property.

This Constitutional certainty is established by numerous court rulings,<sup>60</sup> including *St. Catherine's Milling and Lumber Co. v. the Queen*,<sup>61</sup> *A.G., Ont., v. Mercer*,<sup>62</sup> *Privy Council Appeal No. 36 of 1934*, *Timber Regulations in Manitoba*, *British Columbia*,

<sup>60</sup> "The clear meaning of the Section, reading the Act as a whole, was that anyone who cut and carried away lumber from ungranted or leased Crown lands without the authority of the Crown or the leasee respectively did so "unlawfully" and was guilty of a misdemeanor etc..."

*R. v. Sappier and Polchies*, 2003 NBPC 2 (CanLII)

"This arrangement was thereafter incorporated in a formal written agreement which was subsequently ratified by Acts of the legislature of Alberta, chapter 21 of the statutes of Alberta 1920, the Parliament of Canada, chapter 3 of the statutes of Canada 1930, and the United Kingdom, chapter 26 of the statutes of 1930, being the *British North America Act*, 1930.

The material provisions of this agreement are as follows:

1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of Section 109 of the *British North America Act*, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines, minerals or royalties, shall, from and after the coming into force of this Agreement and subject as therein otherwise provided, belong to the Province, subject to any trust existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this Agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said, lands, mines, minerals, or royalties before the coming into force of this Agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter....

The terms of the transfer agreement from the Dominion to the province came up for consideration before the Judicial Committee in a reference *In re Timber Regulations for Manitoba*<sup>[3]</sup>, and it was there held that the transfer amounted to a statutory novation."

*Anthony v. Alberta (Attorney-General)*, [1943] S.C.R. 320.

"The precise issue is whether or not the provinces severally assumed, by these agreements, an obligation to repay moneys received by the Dominion, as dues in respect of timber permits granted to entrants in occupation of homesteads, under regulations professedly promulgated under the *Dominion Lands Act*. The regulation which gives rise to the obligation to repay is no. 47 (f). We quote it textually, as well as no. 47 (e):

(e) Any holder of an entry for a homestead, a purchased homestead or a pre-emption, who, previous to the issue of letters patent, sells any of the timber on his homestead, purchased homestead or pre-emption, to owners of saw-mills or to any others without having previously obtained permission to do so from the Minister, is guilty of a trespass and may be prosecuted therefor before a justice of the peace and, upon summary conviction, shall be liable to a penalty not exceeding one hundred dollars, and the timber so sold shall be subject to seizure and confiscation in the manner provided in the *Dominion Lands Act*.

(f) If the holder of an entry as above described desires to cut timber on the land held by him, for sale to either actual settlers for their own use or to other than actual settlers, he shall be required to secure a permit

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from the Crown timber agent in whose district the land is situated, and shall pay dues on the timber sold to other than actual settlers at the rate set out in section 42 of these regulations, but the amount so paid shall be refunded when he secures his patent."

Reference re Refund of Dues Paid under s. 47 (f.) of *Timber Regulations*, [1933] S.C.R. 617.

<sup>61</sup> “The enactments of Section 109 are, in the opinion of their Lordships, sufficient to give to each province, subject to the administration and control of its own Legislature, the entire beneficial interest of the Crown in all lands within its boundaries, which at the time of the union were vested in the Crown, with the exception of such lands as the Dominion acquired right to under Section 108, or might assume for the purposes specified in Section 117. Its legal effect is to exclude from the “duties and revenues” appropriated to the Dominion, all the ordinary territorial revenues of the Crown arising within the provinces. That construction of the statute was accepted by the Board in deciding “Att. Gen. of Ontario v. Mercer (8 App. Ca., 767), where the controversy related to land granted in fee simple to a subject before 1867, which became escheat to the Crown in the year 1871. The Lord Chancellor (Earl Shelborne) in delivering judgement in that case, said (8 App. Ca., 776), “It was not disputed, in the argument for the Dominion at the bar, that all territorial revenues arising within each province from “lands” (in which term must be comprehended all estates in land), which at the time of the union belonged to the Crown, were reserved to the respective provinces by Section 109; and it was admitted that no distinction could, in that respect, be made between lands then ungranted, and land which had previously reverted to the Crown by escheat. But it was insisted that a line was drawn at the date of the union, and that the words were not sufficient to reserve any lands afterwards escheated which at the time of the union were in private hands, and did not then belong to the Crown.” Their Lordships indicated an opinion to the effect that the escheat would not, in the special circumstances of that case, have passed to the province as “lands”; but they held that it fell within the class or rights reserved to the provinces as “royalties” by Section. 109. Had its Indian inhabitants been the owners in fee simple of the territory which they surrendered by the Treaty of 1873, “Att. Gen. of Ontario and Mercer” might have been an authority for holding that the Province of Ontario could derive no benefit from the cession, in respect that the land was not vested in the Crown at the time of the union.”

*The St. Catherine’s Milling and Lumber Company v. the Queen* on the Information of the Attorney General for the Province of Ontario; Privy Council; 1888.

<sup>62</sup> “From the use of the word “revert,” in the write of escheat, is manifestly derived the language of some authorities which speak of escheat as a species of “reversion.” There cannot, in the usual and proper sense of the term, be a reversion expectant upon an estate in fee simple. What is meant is that, where there is no longer any tenant, the land returns, by reason of tenure, to the lord by whom, or by whose predecessors in title, the tenure was created. Other writers speak of the lord as taking it by way of succession or inheritance, as if from the tenant, which is certainly not accurate. The tenant’s estate (subject to any charges upon it which he may have created) has come to an end, and the lord is in by his own right....

There is only one clause in the Act by which any sources of revenue appear to be distinctly reserved to the Provinces, viz., the 109<sup>th</sup> section:-- “All lands, mines, minerals, and royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick, at the Union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same.” The Provincial Legislature are not, in terms, ere mentioned; but the words, “shall belong to the several Provinces,” are obviously equivalent to those used in Section 126, “are by this Act reserved to the respective Governments or Legislatures of the Provinces.” That they do not apply to all lands held as private property at the time of the Union seems clear from the corresponding language of Section 125, “No lands or property *belonging to* Canada, or any Province, shall be liable to taxation:”...

...that exclusive powers of legislation were given to the Provinces as to “the management and sale of the public lands *belonging to* the Province,” would still leave it necessary to resort to Section 109 in order to determine what those public lands were. The extent of the Provincial power of legislation over “property and civil rights in the Province” cannot be ascertained without at the same time ascertaining the power and rights of the Dominion under Section 91 and 102, and therefore cannot throw much light upon the extent of the exceptions and reservations now in question.

It was not disputed, in the argument for the Dominion at the bar, that all territorial revenues arising within each Province from “lands,” (in which term must be comprehended all estates in land), which at the time

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of the Union belonged to the Crown, were reserved to the respective Provinces by Section 109; and it was admitted that no distinction could, in that respect, be made between Crown lands then ungranted and land which had previously reverted to the Crown by escheat. But it was insisted, that a line was drawn at the date of the Union, and that the words were not sufficient to reserve any lands afterwards escheated, which at the time of the Union were in private hands, and did not then belong to the Crown. ...The general subject of the whole section is of high political nature; it is the attribution of Royal territorial rights, for purposes of revenue and government, to the Province in which they are situate, or arise. It is a sound maxim of law, that every word ought, *prima facie*, to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or context. Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Attorney General of Ontario v. Mercer, from the Supreme Court of Canada, delivered 18<sup>th</sup> July 1883.

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<sup>63</sup> "By section 11 (1) British subjects or intending British subjects are empowered to make application for entry for a homestead; if that application were accepted on payment of the prescribed fee, the receipt given by the local agent of the Government was to be a "certificate of entry," entitling the recipient to take, occupy, use and cultivate the land entered for, and to hold possession thereof to the exclusion of any other person, and to bring and maintain actions for trespass committed on the land. These rights, however, were subject to the proviso that occupancy, use and possession of land should be subject to the provisions of the Act of any other Act affecting it, or of any regulations made thereunder (section 11 (2)). By section 11 (6) it was provided that an entry for a homestead should be for the sole use and benefit of the entrant, failing which the Minister should have a discretion to cancel the entry. An entrant was bound to perfect his entry by taking up possession of the land and beginning residence thereon within six months from the date of the certificate, failing which the entry was liable to be cancelled; it might also be cancelled if the entrant in any year failed to fulfil the requirements of the Act. ... At the end of three years, the entrant might be granted letters patent for the land, which thereupon vested in the entrant in fee simple. Before, however, letters patent could be issued the entrant was required to have fulfilled certain conditions, and in particular to have erected a habitable house on the plat and to have cultivated such area of land in each year as to satisfy the Minister..."

On this view, then there is no reference in the Act to the powers (if any) of an entrant in regard to timber on his land until the part of the Act which is headed "Summary proceedings respecting forfeiture and trespass." Under that heading there is (*inter alia*), section 103, which is in these terms:--

"103. Any holder of an entry for a homestead who previous to the issue of the letters patent, sells any of the timber on his homestead to owners of sawmills or to any other settlers for their own exclusive use, without having previously obtained permission so to do from the Minister, is guilty of a trespass and may be prosecuted therefore before a justice of the peace, and, upon summary conviction, shall be liable to a penalty not exceeding one hundred dollars, and the timber so sold shall be subject to seizure and confiscation in the manner hereinbefore provided."

Before considering the effect of Regulations ... it may be useful to consider what is the position of the entrant between the date of his entry and the time at which in virtue of the letters patent he becomes owner in fee of the plot. The transaction under which he acquires his right as entrant is not easy to bring under the precise description of contract. In one aspect the terms of the Dominion Lands Act and the Regulations may be regarded as constituting an invitation to qualified persons to tender, so that a qualified applicant by making an application and tendering the fee, makes an offer which the Government, by giving the receipt accepts; thus there is the consensual element which justifies the application of the term "arrangement" even if the term "contract" is not strictly appropriate. The holder of the entry becomes bound, at least on acquiring possession, to fulfil the terms of the statute and in particular becomes subject under section 2 of the Act in regard to his use, occupancy and possession of the land to the provisions of the Act or any other Act affecting it or of the Regulations made thereunder. The rights thus acquired by the holder seem to fall within the language of this Board in *Glenwood Lumber Company v. Phillips* [1904], at p. 408:--

"If the effect of the instrument" [or here the transaction] "is to give the holder an exclusive right of occupation of the land, though subject to certain reservations or to a restriction of the purposes for which it may be used, it is in law a demise of the land itself."

But whether properly described as a demise or not, the holder does acquire an interest or estate in the land, subject to conditions. He acquires the use and occupation for purposes of cultivation and is bound to cultivate, unless the case falls within section 27. But until the letters patent are granted the freehold is in the Crown; and standing timber is part of the freehold. Thus in *Benwick v. Whitfield*, 3 P. Wms. 267, Talbot L.C. said:--

"The Timber while standing is part of the inheritance; but whenever it is severed either by the Act of God or by tempest or by a trespasser and by wrong, it belong to him who has the first estate of inheritance whether in fee or in tail who may bring trover for it."

Lord Talbot had in mind the case of a tenant for life, but the principle is applicable to tenants generally. In the Act timber is defined as meaning "trees standing, fallen or cut." Section 103 of the Act and Regulations 47 (e) and (f) show clearly that there are limits to the powers granted to entrants dealing with timber. It is clear that wrongfully to cut timber constitutes trespass, and hence that terms is used to describe the wrongful act in section 103, and Regulation 47 (e), at least in regard to timber wrongfully cut, which remains the property of the Crown, as is expressly provided in the analogous cases under section 63. It is not specified in the Act or Regulations what use an entrant may properly make of timber on his lot, though it is agreed that he is impliedly entitled to cut it to clean the ground, or to use as fuel, or to build the house which under section 16 he is bound to build as a condition of being granted letters patent, or to provide fencing and so forth. But Regulation 47 (e) debars him from selling it, save under a permit, and regulation 47 (f) forbids him to cut timber on the land for sale without a permit, save as provided, and imposes on him an obligation to pay dues on timber sold in accordance with the terms set out in the regulations. These regulations accordingly constitute restrictions on the rights conferred by the certificate of entry; by section 11 (2) the entrant has undertaken to be bound by these Regulations, and they are accordingly terms of the transaction under which the entrant has become entitled to his interest in the plot against the Crown; equally are the terms which bind the Crown, such as the obligation to refund sums paid, terms of that transaction.

But in addition, the right to cut for sale and sell such timber off the land on paying the prescribed due under regulation 47 (f) is itself not merely a licence, but an interest in lands. The distinction between a licence and a grant is clearly stated by Romer L.J. in *Ware v. London County Council* [1904], 1 K.B. 713, at p. 721, where citing *Thomas v. Sorrell*, Vaugh., 351, he distinguishes "a licence property so called" from "a right in the nature of a profit *a pendre*, i.e. to take something out of the soil," which is matter of grant: the latter case he illustrates by the instance of a permission not merely to cut down a tree on a man's ground, but to carry (or have it carried) away.

In their Lordships judgment, the dues were paid for the right to sell of the land, which was the property of the Crown, the trees which could not be lawfully either cut for sale or sold off the land without permission. Hence the dues were paid in respect of an interest in the land—that is, in respect of the trees which till cut were part of the freehold, and in respect of their sale off the land. All this without the permit would have been a wrongful act or trespass. The contingent obligation of the Crown to refund was an integral part of the transaction.

It has been necessary to define the position of the entrant in order to deal with the questions of construction, on which depends the answer to the questions referred. These questions of construction arise on four separate contracts made between the Dominion on the one hand and the four several Provinces on the other. These contracts were all of the same character; in each case the Dominion undertook to transfer (or in the case of British Columbia to re-transfer) the Crown lands to the Province respectively in question; each agreement contained a number of detailed provisions not here material, and also contained certain financial terms under which annual sums were to be paid by the Dominion to the Province. The provisions directly relevant to this appeal are substantially identical in the four agreements. Those contained in clause 1 and 2 of the Manitoba agreement, may be taken as typical and are as follows:—

1. In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section 109 of the British North American Act, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province,...

The respondent contends that under these clauses the Dominion is entitled to retain the payment made to the Dominion under Regulation 47 (f), but that the Province is bound to refund any amounts which may become due under the same Regulation to an entrant when he secures his patent. These contentions involve two main propositions: (1) that dues paid to the Dominion under the regulations constitute payments within clause 1 in respect of lands within the Province falling within the agreement, and (2) that the holder of the entry acquires his position under an arrangement whereby he becomes entitled to an interest in Crown lands in the Province as against the Crown or further or alternatively that a permit and payment of dues under Regulation 47 (f) is in itself such an arrangement. From these propositions it follows, it is contended, that under clause 1 the Dominion is entitled to retain without being liable to

## STANDARD AND/OR DUTY OF CARE BY ENFORCEMENT

Councillors, Planners, By-law enforcement Officers and staff must read and understand the enabling legislation, in its entirety,<sup>65</sup> prior to the enactment of a by-law, which they are attempting to enforce. A working knowledge of the *Forestry Act* reveals that tree/foliage cutting/preservation by-laws could not be implemented or enforced on

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account to the Province all such payments, made before the coming into force of the agreement, but that under clause 2 the Province is bound to refund the amounts so paid by an entrant to him when he secures his patent, as being necessary to carry out the terms of such an arrangement as clause 2 specifies.

The Supreme Court has accepted these contentions as well founded, and their Lordships agree with the Supreme Court.

...The dues when paid were in no sense impressed with a trust; they were paid so that they should belong to, or become the property of, the Dominion; there simply attached to the Dominion on payment a contingent personal obligation to refund a corresponding amount if or when an entrant secured his patent. The express words of the clause "continue to belong" cannot, in their Lordships judgment, fairly be construed as importing a continuance of anything beyond the mere fact of "belonging," and the express words that the Dominion were not to be "liable to account" also import the intention that the payments so received were to be put out of any future account between the Dominion and the Province."

Privy Council Appeal No. 36 of 1934, In the matter of a Reference concerning refunds of due paid under the terms of Section 47 (f) of the Timber Regulations in Manitoba, British Columbia, Saskatchewan and Alberta. Judgment of the Lords of the Judicial Committee of the Privy Council, delivered 17<sup>th</sup> January, 1935.

<sup>64</sup> "After pointing out that a body with a power of legislation on the subjects entrusted to it so ample as that enjoyed by a Provincial Legislature could while preserving its own capacity intact seek the assistance of subordinate agencies as had been done in *Hodge v. The Queen* (<sup>141</sup>). Viscount Haldane continues:—"but it does not follow that it (i.e. a Provincial [Page 38] Legislature) can create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence.

FAUTEUX J.:—... the acceptance of the delegation is imperative and not permissive; the delegate does not make laws but by-laws, orders, rules or regulations; and such a subordinate legislation is, of its nature, ancillary to the statute which delegates the power to make it."

Attorney General of Nova Scotia v. Attorney General of Canada, [1951] S.C.R. 31

<sup>65</sup> "However, in the application of modern principle, courts are currently disregarding the part that mentions the intention of Parliament: "the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, *and the intention of Parliament*." Sullivan on the Construction of Statutes, Sixth Edition, 2014. Ruth Sullivan, LL.B., B.C.L., earned a master's degree in English from Concordia University, degrees in common law and civil law from McGill University and a master's degree in legislation from the University of Ottawa. She clerked for the Right Hon. Chief Justice Boris Laskin at the Supreme Court of Canada in 1982 and was called to the Bar of Ontario in 1984. After 27 years of teaching in the Faculty of Law at the University of Ottawa, she retired in 2011. She continues to work in the Legislative Services Branch at the federal Department of Justice...Forward.

"1.16 - ...They take both a positive and negative form: courts presume that legislatures want to do the right thing, such as comply with constitutional limits on their jurisdiction or with Canada's international law obligations; they also presume that legislatures want to avoid violating constitutional norms such as rule of law – by expropriating property without compensation, for example, or enacting retroactive legislation." Sullivan on the Construction of Statutes, Sixth Edition, 2014, p. 3.

properties where there were no registered agreements, no boundary tree agreements between abutting property owners and/or where the municipality had not lawfully acquired the trees. This follows the intent of the Act. And the case law supporting this position.<sup>66</sup>

Various court rulings have expressed that an Act must read as a whole to determine what the intent and how the Act is to be understood. This includes the historical reading of the Act.<sup>67</sup>

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<sup>66</sup> “[43] The court in *Centrum* concluded:

Although there is a dearth of authorities on the proprietary rights of landowners with respect to trees growing on boundary lines, the respective rights of adjacent landowners are fairly well established in so far as trees growing on their respective properties are concerned. It would seem to me to be a fair analysis of the problem in this case to examine the situation that the Institute would be in if the trees which will be affected by its construction project were entirely on Centrum's land. To put it another way, I would have thought that Centrum could have no greater right in the trees on the boundary line than it would have if the trees were completely on its land.

“[56] The Appellant also submits that the court should consider the Respondent's intended use and enjoyment when he purchased the property rather than his intended use after he had purchased the property and the six year old child was to come to live at the Sutton Property. This submission makes no sense. A person's use and enjoyment of a property may change over time. The issue is whether the intended use and enjoyment was reasonable and whether the alleged nuisance significantly and unreasonably interfered with the proposed reasonable use. In this case, the proposed intended use was to put up a fence so that the Respondent and others could safely enjoy his backyard. That is a reasonable use. For the reasons set out above, the boundary cedars were a nuisance.”

“[59] Similarly, putting the protection of trees ahead of abating a nuisance, makes little sense. Clearly, protection of trees is important but this factor must be balanced against the proposed use and enjoyment of the neighbour's property and the degree to which the trees constitute a nuisance.”

“[63] The difficulty is the Appellant decided that he would not consent to the removal or trimming of any of the cedars. The City would not prevent the Respondent from cutting the trees. The Appellant would not consent. In these circumstances, the Respondent had no choice but to proceed to cut the boundary trees in the fashion that he did.” *Davis v Sutton*, 2017 ONSC 2277 (CanLII)

<sup>67</sup> “7 The result in this case depends on whether KP Pacific's policy falls within Part 5 of the Insurance Act, governing fire insurance, or within Part 2, the general part. If the policy falls within Part 5, the appellant is out of time. If not, it may pursue its claim. Which Part applies depends on how one reads the Act. To attempt to understand the Act's provisions, one must trace its history.” *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada*.

“[37] Air Canada correctly submits that, before concluding that legal provisions are in conflict, there should be an attempt to harmonize them, in view of the general presumption that the law is coherent:

[TRANSLATION] 1150. [...] The law, the product of the rational legislator, is deemed to be a reflection of coherent and logical thought. Interpretations consistent with the premise of legislative rationality are therefore favoured over those that are incoherent, inconsistent, illogical or paradoxical.  
[...]

1152. [...] The statute is to be read as a whole, and each of its components should fit logically into its scheme. This coherence should extend to rules contained in other legislation... Accompanying this “horizontal” consistency, a “vertical” consistency is also presumed. Enactments are deemed to fit into a hierarchy of legal norms.” *Thibodeau v. Air Canada*, 2012 FCA 246 (CanLII)

## CONCLUSION

When one is in a position of authority it is difficult to be sure that all avenues have been presented by staff.<sup>68</sup> This type of situation causes by-laws to be written that are of no force or effect, under section 14, of the Municipal Act:

### ***Conflict between by-law and statutes, etc.***

- 14. (1)** *A by-law is without effect to the extent of any conflict with,*
- (a) a provincial or federal Act or a regulation made under such an Act; or*
  - (b) an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation. 2001, c. 25, s. 14.*

### ***Same***

**(2)** *Without restricting the generality of subsection (1), there is a conflict between a by-law of a municipality and an Act, regulation or instrument described in that subsection if the by-law frustrates the purpose of the Act, regulation or instrument. 2006, c. 32, Sched. A, s. 10*

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<sup>68</sup> Marrocco, ACJ, recommendations from the Inquiry:

“17 The Code of Conduct should state that Council members must perform their duties with integrity, objectivity, transparency, and accountability to promote public trust and confidence. The public is entitled to expect the highest standards of conduct from the individuals they elect to local government ...”

From the Inquiry some recommendations for staff:

“97 Staff must not conceal or manipulate information. Staff must never intentionally misrepresent facts or information.

101 Staff should be prohibited from participating “in the analysis of information” or making any “decisions on an issue or matter in which” staff have “a real or apparent conflict of interest”.

102 The Code of Conduct should prohibit staff from using their positions at the Town... “to further their private interests”.

104 Staff “shall not use information for personal or private gain” or the gain of family, relatives, or friends.

109 The Code of Conduct should state that staff reports must be objective and identify a full range of options for Council to consider. The risks associated with options must be clearly and fully presented. At no time should the fiscal impacts of any option be minimized by staff.

112 The Code of Conduct should state that staff should not summarize or explain the findings of a consultant’s report. A consultant should be available to speak to Council and respond to questions and issues that arise from the consultant’s report..

124 Any staff “found to have violated the Code of Conduct may be subject to disciplinary action,” “including discharge from employment.” A clear message must be sent that ethical misconduct by staff is serious misconduct and the penalties should reflect this principle.”

“Transparency and the Public Trust, Report of the Collingwood Judicial Inquiry, Vol. IV, Nov. 2020.  
<https://www.collingwoodinquiry.ca/report/pdf/CJI-Vol-IV-RecsProcess-5pp4-web.pdf>

From the beginning we have presented the *Constitution (British North America Act, 1867 [BNA])*, the *Forestry Act*, the *Public Lands Act*, the *Property and Civil Rights Act*, including section 394 (e) of the *Municipal Act*, etc., and the Municipalities, it would seem to be creating by-laws that violate these superior documents.

The violation also includes interfering with the Crown Grants/Letters Patent, which, again, are Acts of the Crown prerogative and have been known to repeal certain sections of various constitutions and are considered part and parcel of the creation of Canada and Ontario.

Time and time again, due to lacking information for the Councils to make informed decisions on by-laws, private property owners are accused and charged under by-laws that have been created without all of the pertinent information required.

The private property owner then, in turn, must pay for legal defence and advice, while the municipality uses rate-payers money for their prosecution. This is creating a huge rift between the elected officials and their communities. It is also removing the private property rights of the elected officials.

From research we have done, it is shown that there is a rule that before any by-law or legislation is created one should seek out every and all pieces of legislation and statutes to ensure that any by-law or piece of legislation is not found to be *ultra vires*, beyond the territorial and/or constitutional ability of the level of government that is creating the piece.

And from Supreme Court cases, it is also a rule that when a piece of legislation is referred to in one piece, both pieces need to be read in unison to ensure the legislation is being implemented and interpreted properly.<sup>69</sup> Ergo, Section 135 of the *Municipal Act* must be read together with the *Forestry Act* to ensure that any tree cutting by-law is only implemented for property owned by municipality/county and/or public/Crown property.

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<sup>69</sup> [21] Provisions within a regulation should be read in the context of the regulation and the enabling Act as a whole: R. Sullivan, *Driedger on the Construction of Statutes*, Butterworths, 1994, at p. 246. From the perspective of the two pieces of relevant legislation here being read together, the following passage from another text by the same author, R. Sullivan, *Statutory Interpretation*, Irwin Law, 1997, at 124, is instructive:

"A legislature may enact more than one statute on the same subject or may enact provisions in one statute that touch on a matter dealt with in another. A single legislative scheme may be embodied in more than one enactment. Statutes, or portions of statutes, that deal with the same subject or contribute to an integrated scheme are said to be *in pari material*. These statutes are read together as if they were part of a single Act."

*Earthroots Coalition v. Ontario (Minister of natural resources)*, 2003 CanLII 49397 (ON SCDC)

It is with this report that we hope that our Municipalities will be protected from issuing licenses, permits, fees and fines that can be challenged in the courts, saving time, money and effort for both the Municipalities and the electorate.

## **Bio:**

Elizabeth Marshall – President All Rights Research Ltd.,  
Author – Property Rights 101: An Introduction, Second Edition  
Director of Research for the Ontario Landowners Association,  
Chairperson - Canadian Justice Review Board,  
Legislative Researcher – MPs, MPPs, etc.,  
Legal Researcher – Queen’s Counsel, Lawyers and various law firms.

I am a legal - historical researcher and author. I have published many reports and articles respecting various pieces of Legislation and Legislative Instruments, as well as a book, in its second edition, on property/constitutional rights. I have authored various articles for the Landowner Magazine, etc. I do Legal Research Queen’s Counsel, Lawyers and various law firms. I am the Director of Research, for Ontario Landowners Association and I do legislative research for elected officials including MPs, MPPs, Council members and Municipal Officials. In May of 2012 I was elected to the Board of Directors of the Canadian Justice Review Board. In October of 2020 I was elected to the position of Chairperson for the Canadian Justice Review Board and I continue to work with various National groups and officials in a research capacity. I am not a lawyer and do not give any legal advice.

**From:** [Michael Fry](#)  
**To:** [Group: Forests and Trails](#)  
**Subject:** Grey County - Forest Management Bylaw Comments  
**Date:** May 2, 2021 4:14:25 PM

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**[EXTERNAL EMAIL]**

Good afternoon,

I wanted to provide a couple of comments regarding the Forest Management Bylaw.

- in reference to the size of markings, I believe this is supposed to be 5 cm<sup>2</sup>....or is it length/width?

- relating to diameter-/circumference limit harvesting either

a) removing diameter-/circumference-limit from being a permitted activity within the by-law, or

b) only allowing it in specific areas (or not in specific areas). If it is allowed, is it possible to exclude it from sensitive areas such as ANSI's, Niagara Escarpment Commission Escarpment Natural areas, Significant Woodlands identified in the Grey County Official Plan. The reason I am suggesting this as there is research showing diameter-limit harvesting is an unsustainable practice and can cause significant long-term harm to a forest area and these areas have been identified as sensitive/unique.

- possibly include a provision that a silvicultural prescription needs to be approved/stamped by a member (in good standing) of the Ontario Professional Foresters Association (either Associate or Full member).

Please feel free to contact me for clarification on any of these points.

Thanks for your time!

Mike Fry

## Comments on Forest Management By-law Update for Grey County

Given:

1. that the value of forests and even individual trees is well-known<sup>1,2,3,4</sup>, and
2. that we are experiencing a Climate<sup>5</sup> and Biodiversity<sup>6</sup> crises both of which trees and forests are known to mitigate<sup>7</sup>, and
3. Grey County is still relatively rich in trees and forest

I urge Grey County make the protection of trees and forests a priority, and strengthen that protection in the by-law to the maximum possible in the current political climate. I also urge that the by-law be updated as frequently as possible as the political awareness of both crises is raised and as both become even more self-evident.

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<sup>1</sup> Lanthier, T. The Value of our Natural Areas, 2018. Grey Sauble Conservation, Owen Sound, Ontario.

<sup>2</sup> Eaton, D and Prins, C., 'Measuring the Value of Forests in a Green Economy', Food and Agriculture Organisation of the United Nations. UN 2018. [https://unece.org/fileadmin/DAM/timber/publications/DP-70\\_WEB.pdf](https://unece.org/fileadmin/DAM/timber/publications/DP-70_WEB.pdf)

<sup>3</sup> Glick, P., E. Powell, S. Schlesinger, J. Ritter, B.A. Stein, and A. Fuller. 2020. The Protective Value of Nature: A Review of the Effectiveness of Natural Infrastructure for Hazard Risk Reduction. Washington, DC: National Wildlife Federation. Available: <https://nwf.org/-/media/Documents/PDFs/NWF-Reports/2020/The-Protective-Value-of-Nature.ashx?la=en&hash=A75F59611475502BEE58723F8B3C58423417E579>

<sup>4</sup> **Forest Values; Woodlands and Wildlife; A Vision for the New England Landscape**  
<http://www.wildlandsandwoodlands.org/vision/forest-values>

<sup>5</sup> United Nations, UN75; 2020 and Beyond. Shaping our Future Together. Available: <https://www.un.org/en/un75/climate-crisis-race-we-can-win>

<sup>6</sup> Kurth, T. et al, 2021. The Biodiversity Crisis is a Business Crisis. Available: <https://www.bcg.com/publications/2021/biodiversity-loss-business-implications-responses>

<sup>7</sup> Kline, J. and Haight, R. 2021. Planting Trees to Mitigate Climate Change: Policy Incentives could lead to Increased Carbon Sequestration, Science Findings, USDA. Available: <https://www.fs.fed.us/pnw/science/scifi236.pdf>

**From:** [Nikki May](#)  
**To:** [Group: Forests and Trails](#)  
**Subject:** Forest Management By-law Update  
**Date:** April 28, 2021 12:24:42 PM  
**Attachments:** [Comments on Grey Forest By-law.docx](#)

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**[EXTERNAL EMAIL]**

Hello

My comments are below as well as included in the attached WORD document (easier to read).

Given:

1. that the value of forests and even individual trees is well-known<sup>[i]</sup>,<sup>[ii]</sup>,<sup>[iii]</sup>,<sup>[iv]</sup>, and
2. that we are experiencing a Climate<sup>[v]</sup> and Biodiversity<sup>[vi]</sup> crises both of which trees and forests are known to mitigate<sup>[vii]</sup>, and
3. Grey County is still relatively rich in trees and forest

I urge Grey County make the protection of trees and forests a priority, and strengthen that protection in the by-law to the maximum possible in the current political climate. I also urge that the by-law be updated as frequently as possible as the political awareness of both crises is raised and as both become even more self-evident.

Susan (Nikki) May



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<sup>[i]</sup> Lanthier, T. The Value of our Natural Areas, 2018. Grey Sauble Conservation, Owen Sound, Ontario.

<sup>[ii]</sup> Eaton, D and Prins, C., 'Measuring the Value of Forests in a Green Economy', Food and Agriculture Organisation of the United Nations. UN 2018.  
[https://unece.org/fileadmin/DAM/timber/publications/DP-70\\_WEB.pdf](https://unece.org/fileadmin/DAM/timber/publications/DP-70_WEB.pdf)

[iii] Glick, P., E. Powell, S. Schlesinger, J. Ritter, B.A. Stein, and A. Fuller. 2020. The Protective Value of Nature: A Review of the Effectiveness of Natural Infrastructure for Hazard Risk Reduction. Washington, DC: National Wildlife Federation. Available: <https://nwf.org/-/media/Documents/PDFs/NWF-Reports/2020/The-Protective-Value-of-Nature.ashx?la=en&hash=A75F59611475502BEE58723F8B3C58423417E579>

[iv] **Forest Values; Woodlands and Wildlife; A Vision for the New England Landscape**

<http://www.wildlandsandwoodlands.org/vision/forest-values>

[v] United Nations, UN75; 2020 and Beyond. Shaping our Future Together. Available: <https://www.un.org/en/un75/climate-crisis-race-we-can-win>

[vi] Kurth, T. et al, 2021. The Biodiversity Crisis is a Business Crisis. Available: <https://www.bcg.com/publications/2021/biodiversity-loss-business-implications-responses>

[vii] Kline, J. and Haight, R. 2021. Planting Trees to Mitigate Climate Change: Policy Incentives could lead to Increased Carbon Sequestration, Science Findings, USDA. Available: <https://www.fs.fed.us/pnw/science/scifi236.pdf>



**National  
Farmers  
Union** EST.  
1969  
**O n t a r i o**

Grey County  
Local 344

May 1, 2021

Scott Taylor  
Grey County  
Senior Planner  
scott.taylor@grey.ca

Re: Tree line and Hedgerow removal in Grey County

Dear Scott,

I am contacting you as the president of the National Farmers Union - Ontario (NFU-O) Grey Local 344. As I mentioned in our latest agricultural advisory meeting on March 18, 2021, our board is currently looking into the impacts of and reasons for, tree line and hedgerow removal from farm lands in Grey County. Impacts that are of concern to the County and the people living here include:

- Blowing and drifting snow potentially leading to more motor vehicle accidents.
- Increased erosion from wind and water leading to loss of topsoil from farmland, silting of ditches and local waterways, and decreased surface water quality.
- Loss of habitat and wildlife corridors for a variety of wildlife important for hunters, anglers, conservationists, tourism, and other stakeholders.
- Decrease in water retention and natural windbreaks, which are important in mitigating extreme weather events, and
- Loss of aesthetic appeal, both for local residents and for tourists, and thus important to the broader Grey County economy, as noted in your Natural Heritage Study 'Green in Grey'.

Our board is hoping that you're a good person to talk to about this issue and might be able to answer the following questions:

1. Is there any data which shows the current and prior state of tree lines and hedgerows, perhaps in GIS form for different years? It would be good to know what percentage Grey County has lost in the past 5 and 10 years.
2. Is there any data on motor vehicle accidents and snow removal costs in relation to roads which have little to no tree lines and hedgerows?
3. Are there any ideas as to why tree line and hedgerow removal is accelerating in Grey County, despite OMAFRA and conservation authority advice, funding, and programming to the contrary?
4. If there are no concrete answers to the above 3 questions, what would be required for Grey County to start researching the financial, environmental and accident risk associated with tree line and hedgerow removal?

I hope that you can respond to the questions noted above before the end of May, as that would help us meet our goals in developing our strategy on this issue. Please contact me at [REDACTED] We appreciate your time in considering our request.

Sincerely,

Brenda Hsueh, President, NFU-O Grey Local 344

To: Town of Blue Mountains Planning Department  
[treebylaw@thebluemountains.ca](mailto:treebylaw@thebluemountains.ca), [nwestendorp@thebluemountains.ca](mailto:nwestendorp@thebluemountains.ca),  
[tsandberg@thebluemountains.ca](mailto:tsandberg@thebluemountains.ca), [severitt@thebluemountains.ca](mailto:severitt@thebluemountains.ca)

CC: Grey County, Forest and Trails, attn: S. Johnson [sarah.johnson@grey.ca](mailto:sarah.johnson@grey.ca)

From: Pamela Spence, SAC member and resident at [REDACTED]  
[REDACTED]

**Re; Comments on TBM Tree By-law and Grey County Forest Management By-law**

Trees do a lot more than shelter birds, animals and humans, create privacy and screening between our neighbours and provide scenic – often very colourful – views and vistas throughout our community. In addition to these aesthetic pleasures, trees have a role to play in our environment - filtering our air, purifying our water, controlling runoff. They shade our built structures reducing our dependency on energy for A/C. Trees offer wind protection so important in this area to make our winter roads safer. **Trees are critical tools** in dealing with the very serious climate change problems we HAVE to grapple with.

Forwarded with this email are two independent scientific illustrations of the benefits of trees. It is my hope that the Town of the Blue Mountains (TBM) will agree that trees are vital and that it is a good thing to improve their protection.

**GREY COUNTY and TBM ROLES**

It has come to my attention that the Grey County Forest Management By-law is inadequate for general tree protection and has, at a minimum, a very large loop hole. **Section 4.1 d gives developers an exemption from needing a tree cutting permit if they have received draft approval.** This is wrong. Draft approvals come with multiple conditions that MUST be fulfilled before the project can commence on site work many of which impact trees. Tree cutting should not proceed without the tree protection plan and other relevant conditions being completed.

Furthermore as illustrated in the Aquavil case last month, a permit was obtained from GSCA to cut trees even tho the condition of the OMB order clearly states at least three times “Prior to any site grading....”. The Jurisdiction of GSCA to grant a tree cutting permit is unclear and especially in contravention of the clear terms in these conditions.

**The language in Grey County’s Section 4.1 d should be changed so that it is not so difficult to understand. But more importantly, there should be clarity on roles and responsibilities of the various agencies – Grey, GSCA, TBM. Furthermore, are the conditions of draft approval valid and to be fulfilled before on-site activity or not???**

As a member of the Sustainability Advisory Committee I have worked on the Tree Subcommittee researching tree by-laws in numerous jurisdictions in Ontario and Vancouver BC. In a separate attachment I provide you with the links and best practices of the most noteworthy policies and by-laws. I ask that you review these best practices, broaden the scope of TBM's proposed by-law and incorporate best practices into the by-law you intend to create.

By way of summary, I offer you the following suggestions –

#### #1 A TREE/CANOPY STRATEGY SHOULD BE CREATED

Based on the vital importance that trees bring to our world, TBM should set tree goals and create a strategy that highlights the role of trees, recognizes, measures and locates the important stands, large and heritage trees and endangered species. This strategy would create policies that recognize native vs nonnative/ desirable vs undesirable vegetation. This policy should state that tree protection zones must be established during construction, tree replacement plans are required, identify standards for plantings (50% mature canopy after 10 years etc.). The strategy would state under which circumstances a tree cutting permit would be refused – say for example, forecasted runoff or erosion too great, wildlife habitat grossly affected, etc. This will serve to inform persons who want to cut down trees, guide persons creating landscape and tree planting plans and provide information to staff against which to evaluate these plans. Based on this strategy a bylaw serves as a tool to implement this “policy”.

#### #2 IT SHOULD BE CALLED THE **TREE PROTECTION BYLAW** AND APPLY TO SIZABLE TREES ON ALL LANDS AND LOT SIZES OVER 0.2HA.

All trees over a certain size should be considered protected – not for fee purposes but for environmental purposes. The most stringent municipality Collingwood says all trees over 50cm dbh WHILE in Aurora over 70cm dbh must have a permit for removal. One jurisdiction even added a height of 4.5m tall in the event the dbh did not apply. These criteria recognize that trees take many years to grow to the 50-70cm dbh and that extra regard be given to protecting the trees and the work they do. Trees of that size generally would exist longer or be older than the persons proposing to remove them so why should one person decide its fate?

Many tree bylaws pertain to lands of 0.2ha (some are .5ha) and on lands of that size or greater permits are required for removal of trees between 20cm and 50/70cm dbh. Exemption 3(m) of TBM proposed bylaw identifies the size and could be simplified on the foregoing basis. Lots smaller than 0.2ha would not require permits unless they have trees over 70cm dbh. Therefore the by-law should apply to all trees and all lots.

Furthermore a time frame should be added. The bylaw Sec. 3(m) should state that no more than 4 trees under 30cm can be removed per calendar year. The permit should have an expiry – say 90 days and sunset clauses should be included on other measures as appropriate.

### #3 PROTECTION SHOULD BE COMMUNICATED EARLY ON

When an application is made for tree destruction, best practices say a notice of the application should be posted on the site. This informs neighbours, boundary trees are protected in that both (all) neighbours must sign off, and tree protection zones (TPZ) are created to protect roots etc from construction activities. A Tree Inventory should accompany a permit application and that inventory should include trees beyond the property line that might be affected - ie 5 m beyond property line. Where policy stipulates, a tree planting plan should accompany large tract cutting. This plan should include at least 2 years of maintenance/warranty coverage to ensure viability of plantings.

### #4 PERMIT EXEMPTIONS SHOULD BE CLEAR AND FAIR

Properties under a certain size (under 0.2ha) or under an approved management plan would be exempt. Agricultural lands should be exempt except where windbreaks are needed or on those with wetlands, hazard lands and waterbodies, rivers or streams. Trimming required for proper maintenance (properly defined) should be exempt. Diseased/dead trees or those a threat to life should be exempt.

### #5 THERE SHOULD BE MORE ZONING AND OP CATEGORIES IN 2(D).

Other land use designations and terms used in the TBM Zoning or OP should be referenced in 2(d)(i) in this by-law, such as cultural heritage, environmental protection zones, watercourses, woodlands, stormwater management zones, shoreline zones, rural zones and conservation areas/parks/parkland zones.

Then the Community Design standards of the TBM planning documents should be updated with this by-law included.

### #6 WITH **NO DISRESPECT INTENDED**, ISSUING PERMITS FOR TREE PRESERVATION/SELECTION SHOULD NOT BE THE PURVIEW OF THE PLANNING DIRECTOR.

Judgement of which trees are to be saved when they are on a list of tradeoffs for a development proposal could put the Director of Planning in a position of conflict. I have seen often enough that when there are a number of criteria on the table and development negotiations start, trees are often traded for other planning concessions.

Determining which trees are most valuable, fighting for their retention or determining their viability should be the role and expertise of the Director of Parks or Forestry staff. Often their background is forestry and or green infrastructure based. This expertise would be needed to approve the TPZ, review tree planting plans and evaluate the impact of cut trees to the environment. Tree permit evaluations should be independent of the built environment approvals required of Planning.

Furthermore, seriously diseased trees as determined by a professional should also be included in definitions in 1(j). This too is more the call of the Parks dept.

#4      FINALLY I WOULD SUGGEST TBM CREATE A GREEN INFRASTRUCTURE DEPARTMENT

Trees, as highlighted in a tree protection strategy and by this by-law, are a valuable asset for this community, province and world as a whole. They should be recognized as an **ASSET** to be protected. Town of Collingwood has said it will create a Green Infrastructure dept. to inventory and protect its tree assets. I suggest TBM learn from this and follow suit - perhaps even going farther and adding others to the green assets inventory such as watercourses, ponds, lakes, shorelines, etc and protect them under this banner of infrastructure.

According to Municipal World article November 2019, O. Reg. 588/17 requires all municipalities file a GREEN INFRASTRUCTURE PLAN by July 1, 2023. Waiting til 2024 is not an option. Let's do it now!

Thank you for your time and efforts.

Pamela Spence

[REDACTED]

[REDACTED]

May 13, 2021

## One Red Maple can:

- **Remove** 3,100 pounds of **carbon dioxide** from the atmosphere.
- **Reduce** the emissions of 5,500 pounds of **carbon dioxide** and 30 pounds of **air pollution** from a power plant.
- **Save** 570 kWh of electricity and 20 MMBtu of fuel for **cooling and heating**.
- **Intercept** 27,000 gallons of **rainfall** and **avoid** 4,800 gallons of **runoff**.
- **Filter** 15 pounds of **ozone**, **nitrogen dioxide**, and **sulfur dioxide** from the air we breathe.

<https://www.itreetools.org/cta-tree-benefits>



# Water Quality & Storm Water Management

- Storm water runoff is one of the leading causes of impairment to waterways and has led to more than 1,500 beach closings at coastal and Great Lake sites in 1998. Trees planted along waterways can remove over 75 percent of the nitrates in the ground water before the pollutants reach the waterways.
- Trees intercept water and store some of it, reducing storm water runoff and the possibility of flooding.
- A typical medium sized tree can intercept as much as 2,380 gallons of rainfall per year.



<https://www.citywindsor.ca/residents/parksandforestry/Urban-Forest/Tree-Benefits/Pages/Value-of-Trees.aspx#~:text=Almost%20everyone%20knows%20that%20trees,their%20wind%20reduction%20in%20winter.>

## Examples of Municipal Best practices for TBM Consideration

prepared by Pamela Spence May 10, 2021

MUNICIPALITY	Web Link	Terms to be considered and incorporated into TBM bylaw
Town of Aurora	<a href="https://www.aurora.ca/en/home-and-property/resources/Documents/Trees/5850-16-Private-Tree-Protection-By-law-1.pdf">https://www.aurora.ca/en/home-and-property/resources/Documents/Trees/5850-16-Private-Tree-Protection-By-law-1.pdf</a>	Good preamble and justification for existence of by-law Excellent Definitions section at beginning
All examples		Property with professionally prepared and approved forest management plan provided at least 30 days prior to the cutting commencing may operate forest/tree cutting in accordance with stewardship programme.
City of Guelph		"Regulated trees" being coniferous or deciduous trees of 10cm DBH or larger and a height of 4.5m on area of 0.2ha.
Caledon	<a href="https://www.caledon.ca/uploads/14/Doc_635016160599217804.pdf">https://www.caledon.ca/uploads/14/Doc_635016160599217804.pdf</a>	Permit not required if approved building permit granted and the area to be cleared is less than 0.4ha.  Permit not required if for personal use and no more than 20 trees cut in 12 months and woodland definition not affected by change in number of trees  Permit not required if diseased so as to compromise the health of the woodland or hazardous to human health or property.
Aurora, Vancouver and Toronto		Certified arborist to prepare arborist report for diseased or damaged trees.
City of Toronto	<a href="https://www.toronto.ca/legdocs/municipal-code/1184_813.pdf">https://www.toronto.ca/legdocs/municipal-code/1184_813.pdf</a>	Permitting managed by Parks and Recreation with Urban Forestry officers
Town of Aurora		Permit fee not required for community housing projects. Permit required to remove any tree over 70 cm dbh. Permit required to remove any heritage tree.

		<p>Permit required on property under 0.25ha for more than 2 trees in 12 month period with trunk size of 20-70 cm dbh.</p> <p>Permit required on property greater than 0.25ha for more than 2 trees in 12 month period for 0.25 ha with trunk size of 20-70cm dbh.</p> <p>Tree removal (permit) not permitted for trees of endangered species.</p>
Town of Collingwood	<a href="https://www.collingwood.ca/sites/default/files/devcomattachments/fillable_tree_cutting_app_part_1_0.pdf">https://www.collingwood.ca/sites/default/files/devcomattachments/fillable_tree_cutting_app_part_1_0.pdf</a>	<p>Permit required for removal of 5 or more trees of between 15-30cm DBH on a lot of 0.5ha or greater and for removal of any tree greater than 30cm DBH (smaller DBH than Aurora)</p>
Newmarket	<a href="https://www.newmarket.ca/LivingHere/Documents/2151657_2008_Final_Version_Tree_Preservation_Protection_Replacement_and_Enhancement_Policy_April_14_2008.pdf">https://www.newmarket.ca/LivingHere/Documents/2151657_2008_Final_Version_Tree_Preservation_Protection_Replacement_and_Enhancement_Policy_April_14_2008.pdf</a>	<p>Boundary Trees and neighbour trees defined and covered.</p> <p>Signage required when application made that tree cut permit is being requested</p> <p>Tree Protection Zone (beyond root system) required and approved by Forestry when</p> <p>Pertains to trees in the development approval process as permitted through the Planning Act and specifically applies to lands subject to applications for official plan amendment, zoning bylaw amendment, draft plan of subdivision and site plan approval and respective amendments, minor variance (permitting new construction only) and consent.</p>
Collingwood and Toronto		<p>Tree Inventory required and inventory to include 4.5m beyond property boundary (cover the root system of neighbouring trees)</p> <p>Tree removal review to include and assess loss of tree/impact to environmental sensitive areas, ecological systems, landforms and contours, heritage, significant vistas soil, watercourses, drainage, health and habitat of fish and other ecological systems.</p>
Toronto		<p>Permit may not be granted because of negative impacts including but not limited to erosion damage.</p> <p>Tree replanting and management plan to replace, at minimum 1 for 1, (size not indicated) but in Toronto frequently ask for 3-4 for 1 mature tree.</p>

City of Guelph		Management plan to cover two year span for each tree
City of Vancouver	<a href="https://vancouver.ca/home-property-development/trees.aspx">https://vancouver.ca/home-property-development/trees.aspx</a>	Defines that properties should have at least 4 trees per property, removal of any requires replanting plan and bylaw includes a list of acceptable native and non-native trees and vegetation to chose from for replanting plan.
Town of Aurora		Fee for tree cutting permit varies by number and size - more expensive to cut larger trees. Fee for trees between 20 cm - 70 cm dbh are 1-3 trees is \$214 while 8 trees or more are \$104 each. Trees over 70cm are \$534 each.
Collingwood and Caledon		Penalties range from \$500 - \$100,000 for multiple offences. Tree cutting not permitted in environmental protection area, municipal parks, recreation or rural area.
Region of York		Various types of permits - Good Forestry Practices Permit, Special Permit,
County of Wellington	<a href="https://www.wellington.ca/en/resident-services/resources/Planning/Forest-Conservation/Approved-Forest-Conservation-By-law-5115-09.pdf">https://www.wellington.ca/en/resident-services/resources/Planning/Forest-Conservation/Approved-Forest-Conservation-By-law-5115-09.pdf</a>	Various types of permits - Good Forestry, Circumference, Clearing, etc. Many very technical terms to be reviewed by someone with forestry knowledge.



# Trees: The miracle municipal asset



Michael Rosen R.P.F. has been the President of Tree Canada for 12 years, leading its transition to private sector support and successfully advocating for a National Tree Day. He can be reached at [mrosen@treecanada.ca](mailto:mrosen@treecanada.ca).



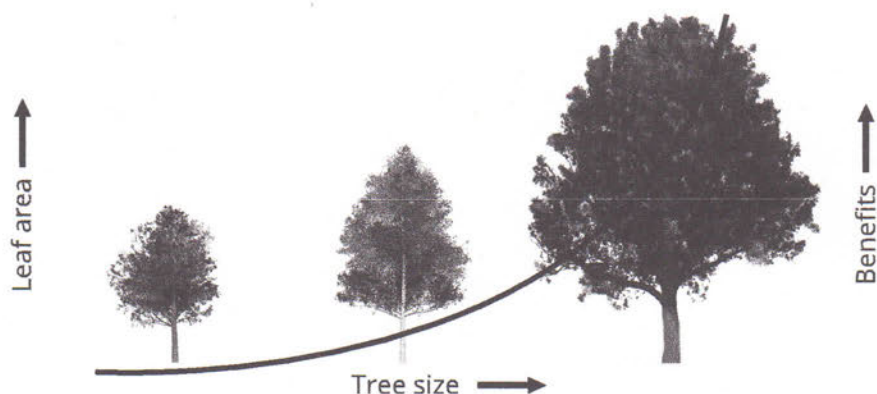
James Lane, R.P.F., is the Manager, Natural Heritage and Forestry at the Regional Municipality of York. James is responsible for leading programs related to the management, protection, and enhancement of green infrastructure. He can be reached at [James.Lane@york.ca](mailto:James.Lane@york.ca).

For municipal asset managers, the assumption is always made that assets will devalue with time. Sidewalks crumble, roads pothole, and bridges need replacing. So says the asset manager as they put forward the various arguments to their line managers for the budget to provide for maintenance or replacement. Yet no matter which way you look at it, trees only increase in value. Not only that, but the value they provide – whether it be economic (e.g., property value), environmental (e.g., CO<sub>2</sub> capture), or health (e.g., psychological well-being) – increases exponentially with time and size. This article will discuss the value of trees as a municipal asset, with some measurement examples drawn from the experience in York Region.

## Historic Context

The perception of trees has changed with time in Canada, especially within the municipal context. Indigenous societies lived with trees, using them for medicine, fuel, and shelter while understanding their function in wildlife habitat. While trees were cleared by some First Nations for agricultural production, European colonization brought an entirely different set of values (and scale) to the clearing of forests and trees. Indeed, trees were frequently seen as a hindrance to “development” and “civilization” and were frequently seen as something to “get rid of.” In later centuries, trees were increasingly valued for their timber properties and in the municipal context, trees were felled to make way for “progress.” In the case of the famous “Cary Fir” in the early part of the 20th century in North Vancouver, British Columbia, municipal officials and citizens celebrated with great enthusiasm as the huge mammoth Douglas fir was felled to make way for “civilization.” Such reactions would be inconceivable today.

Indeed, it was not until later in the 20th century that municipalities sought to “manage” the trees within their jurisdiction. As the industrial revolution made possible the concept of “leisure time,” citizens began to demand that their parks (and trees) provide them with recreational opportunities and beauty as a respite from their hard-working lives. Cities complied. Most of the great iconic Canadian urban parks (from Stanley Park in Vancouver to High Park in Toronto to Mount Royal in Montreal) were created in that 40-year period (1880-1920).



This led to the first “street side plantings” – a new concept in post-industrial Canada. Trees were frequently transplanted from the nearby natural forest or from hastily constructed tree nurseries to supply the burgeoning municipalities. In time, these trees all had to be “managed” by the municipality. The question soon arose as to who would be responsible for managing these new “green assets.” Trees were treated like other infrastructure and their management was handed to those responsible for such things as roads, signs, and parking meters. When “asset management” developed into an entity onto its own, it was commonly associated with “grey infrastructure” (i.e., roads, signs, sewers), whereas trees and other “green infrastructure” were mostly overlooked as things that were just simply there to provide “some beauty” to the municipality. However, with recent municipal trends of greater cost accounting, the trend has returned to looking at trees once more as pieces of “infrastructure,” albeit “green” infrastructure.

### Value of Trees to People

As Canada continued to urbanize (greater than 80 percent at present), trees increasingly rose in importance with greater emphasis on planting and maintenance to keep them on the landscape. Most of us are aware of the benefits of trees – they provide shade from the sun’s rays, they offer shelter and habitat for wildlife, they purify the air we breathe by taking in carbon dioxide and expelling oxygen, and so on. Less well-known is the fact that trees actually make us healthier, both physically and mentally. Trees block out unattractive views and noise while adding beauty to urban landscapes. Trees reduce heating and cooling costs by providing shade to homes in the

summer and by buffering wind, ice, and snow in the winter.

Lately, the urban forest has been seen by many as a possible vehicle through which to reduce some of the impacts of climate change. The impact of the urban heat island on human health is currently receiving considerable attention in larger Canadian centres. For example, the City of Toronto passed a Shade Policy to ensure shade is now present after any new development or re-development in the city as protection against ultraviolet radiation and to mitigate the heat island effect – this includes natural shade (i.e., trees). The role of urban forests in reducing the effects of the urban heat island is well recognized. In its Climate Change Action Plan, the Quebec Ministry of Health recognized this role and announced a program of grants to help communities counter the heat island effect through re-vegetation.

Furthermore, other illnesses caused or aggravated by air pollution – notably respiratory illness, cardiac disease, and neurological pathologies (dementia, autism) – have negatively impacted Canadian populations. The Ontario Medical Association estimates more than 5,800 premature deaths per year can be directly attributable to air pollution. Trees and greenspaces are widely seen as a way to mitigate this pollution.

Trees help combat Nature-Deficit Disorder, a condition that is becoming more and more prevalent among children today. Finally, the presence of urban trees and greenspaces can contribute to the reduction of the prevalence and severity of several mental illnesses such as anxiety, depression, stress, attention-deficit hyperactivity disorder in children, and improve general well-being by providing opportunities for exercise and social

interactions. Indeed, the entire practice of “forest bathing,” widely developed in Japan to counter stress and other mental problems, is receiving greater acceptance elsewhere.

Many vulnerable populations live in districts deprived of trees and greenspaces. Based on available economic studies by TD Bank, it was shown that greener cities are saving billions of dollars per year in environmental costs through tree cover.

### Value of “Green” Asset Management

Asset management planning is the process of making the best possible decisions regarding the building, operating, maintaining, renewing, replacing, and disposing of infrastructure assets. The objective of asset management from a municipal point of view is to maximize benefits, manage risk, and provide satisfactory levels of service to the public in a sustainable manner.

Traditionally, municipal assets were based on the “built environment” (also known as “grey infrastructure”): roads, sidewalks, sewers, stormwater ponds, arenas, etc. The analyses applied looked at life expectancy and comparisons using various maintenance scenarios (e.g., no maintenance versus replacement in 20 years versus maintenance every five years, etc.).

Today, society has evolved to look beyond “grey infrastructure” and into “green infrastructure.” Green infrastructure is defined as the natural vegetative systems and technologies that collectively provide society with a multitude of economic, environmental, and social benefits. This includes:

- urban forests and woodlots;
- bioswales, engineered wetlands, and stormwater ponds;
- wetlands, ravines, waterways, and riparian zones;
- meadows and agricultural lands;
- green roofs and green walls;
- urban agriculture; and
- parks, gardens, and grassed areas.

It also includes soil in volumes and qualities adequate to sustain and absorb water, as well as technologies like porous pavements, rain barrels, and cisterns, which are typically part of green infrastructure support systems. Green infrastructure is a system that

extends from big city centres to rural areas. All components of the system are vital assets to our communities – but these assets may lack sustained funding and policy support from other orders of government.

Increasingly, municipalities are being asked to recognize and communicate the benefits provided by green infrastructure, including trees as a key component. In many analyses, green infrastructure has actually been proven to be a lower-cost solution to grey infrastructure and in some cases the two work closely together. Much of the research on this comes from the U.S. where for example, new guidelines for parking lots in California insist trees be integrated into the lot design to (in addition to many other reasons) prolong the lifecycle of the asphalt through the shade of the trees.

In Ontario, the entire management and accounting of municipal assets are provided for in O. Reg. 588/17: Asset Management Planning for Municipal Infrastructure – which sets out the minimum requirements for asset management. Recently, it has actually been changed to include green infrastructure in the scope of municipal assets. And so, municipalities that are preparing asset management plans must include green infrastructure (due by July 1, 2023).

### Types of Green Infrastructure Assets

In the municipal context, green infrastructure includes biological or living assets, such as:

- street or park trees as well as forests and woodlands,
- soils, and
- wetlands (including bioswales, engineered wetlands, and stormwater ponds).

In addition, it also has engineered assets, including: soil cells (networks of below-ground grey infrastructure, which supports sidewalks and curbs while

affording trees adequate rooting space, etc.); rain gardens, engineered wetlands, bioswales, and stormwater ponds; and permeable paving (aggregate mixed with soil to permit trees to live).

### Green infrastructure

In evaluating and valuing trees, one must use the most appropriate and defensible method to value urban forest biological assets. At the Region of York, for example, this includes:

- street trees, valued using the Council of Tree and Landscape Appraisers trunk formula method (as articulated by the International Society of Arboriculture);
- shrubs and perennials, valued according to replacement cost;
- growing media, valued at replacement cost;
- ecosystem services (the many and varied benefits that humans freely gain from the natural environment, like oxygen production, CO<sub>2</sub> capture, and stormwater detention), valued as derived from the United States Department of Agriculture's (USDA's) i-Tree Eco software analysis suite; and
- civil assets, valued using depreciated replacement cost.

Additionally, the most appropriate and defensible method to value the York Regional Forest's biological assets came down to the following criteria:

- forests, assigned timber value (as per recent timber sales in the York Regional Forest, which regularly cuts 2,400 metres cubed of wood each year to maintain its health), current land value, and the re-establishment costs of a new forest (site preparation, planting stock, planting, etc.);
- wetlands and prairies, assigned current land value, re-establishment (future);
- ecosystem services, assessed using the USDA i-Tree Eco software; and
- civil assets, valued using depreciated replacement cost.

### Defining levels of service and life cycles

Part of asset management is identifying levels of service to be provided by green infrastructure – which is always a challenge. The level of service includes: community level of service; technical level of service; and performance measure.

Defining the life cycle for each type of living asset is another challenge. In York Region, the life cycle for street trees was defined by their three growing environments with an estimated average lifespan of: urban (35 years), suburban (44 years), and rural (53 years). Since the York Regional Forest is composed of natural forest communities, it was considered to be self-perpetrating (with some maintenance) over time.

### Green Infrastructure – Financial Strategy and Planning

Asset management should be the vehicle by which funding is appropriated and budgets are created. A funding plan puts asset management strategies into action, requiring investment to meet service levels.

From this, the municipality can predict key outcomes from its chosen financial strategy, its service levels, and return on investment for some treatments, and then decide on the need to establish a reserve to minimize impacts of funding peaks. The asset management plan then has to be put into action.

By bringing “green infrastructure” into the asset management system, a defensible approach to identifying investment requirements is introduced – thereby “leveling the playing field” with grey infrastructure. This in turn may lead to an increase in access to infrastructure funding programs (in which green infrastructure can provide a lower-cost solution than traditional grey infrastructure ever could).

Trees are the miracle municipal asset indeed. Count them in! **MW**

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## Sarah Johnson

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**From:** Pamela Spence [REDACTED]  
**Sent:** May 13, 2021 4:56 PM  
**To:** Travis Sandberg; Sarah Johnson  
**Subject:** Fw: The Nurturing Power of Trees

[EXTERNAL EMAIL]

More tree info for your files.

Pamela Spence





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on  
Re



## The Nurturing Power of Trees

Trees have always been an intrinsic part of our lives, serving as sources of food, shelter, employment and much more.

However, the many ways that trees nurture us – from the sense of pride we feel when we plant them to the benefits of simply being around them – are not always obvious.

[by: Jane O’Faherty, guess writer, Tree Canada]

[read more →](#)



## How we can nurture our

Often the best thing we can do for  
consider where you want to plant y

[by: Tree Canada Program Manag

[read more →](#)



## The Arbor Day Foundation Recognizes 15 cities in Canada as Tree Cities of the World

The [Arbor Day Foundation](#) has recognized 15 Canadian cities as Tree Cities of the World. [Tree Cities of the World](#) is a p  
[read more →](#)

## Join us at the 2021 Virtual SFI Annual Conference!

Join Tree Canada's CEO, Danielle St-Aubin, on May 13 at 2:30pm EST, where she will speak at the [Sustainable F](#)

[register now →](#)

Cs

Since 2005, [Caron Industries](#) has partnered with Tree Canada to plant trees through the National Greening Program and together, we have Scotia.

Tree Canada is truly thankful for Caron Industries generous support of helping grow better places to live and we look forward to planting trees

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# Constant Contact

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Nathan Westendorp  
Travis Sandberg  
Sarah Johnson  
Shawn Everitt

May 14<sup>th</sup> 2021

Dear all

**Re: Comments regarding Municipal Tree By-Law – for May 14<sup>th</sup> 2021 deadline**

First and foremost, my comments expressed in this correspondence are not to be abridged or sanitized – rather they are to be kept whole for both internal and external use and or publication.

Secondly, is my hope that in reading my comments, the Town will realize that trees also need to protect as they are an asset and therefore need to be included within the development of Town Asset Management Plan scheduled to be delivered in Q3 of 2024.

**Compliance with the Municipal Act 2001, changes as of May 2017**

I am pleased that the Town is undergoing this exercise as currently the Town does not accurately portray its compliance with the Municipal Act, 2001 that required as of May 2017:

**“Adoption of policies”**

**270** (1) A municipality shall adopt and maintain policies with respect to the following matters:

7. The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.

The purpose of my comments is to **strongly encourage** the town to action the following as a result of this process and move from a town ‘**should**’, ‘**encourage**’, ‘**support**’ as stated within The Official Plan to a:

- a. **WILL** Adopt and maintain policies’ as required by Bill 68.
- b. **WILL** Implement measures to protect, enhance, and expand the tree canopy **and report annually on progress.**
- c. There is also a need to include the word ‘vegetation’ as outline in the Municipal Act.

A review of other municipalities has revealed a broader range of policies, bylaws and other tools that protect and/or enhance trees and vegetation features. Examples of tools include By-laws which support the preservation of trees, as well as the protection and implement measures to protect, enhance, and actually expand their tree canopy<sup>1</sup> include:

- By-law for woodlands management
- Tree Preservation By-law,
- Tree Cutting By-law
- Tree Conservation By-law, etc.
- Tree Inventory and Preservation Plan
- Forestry Master Plans inclusive of a Tree Inventory and Preservation Plan.
- Grant for tree planting
- Municipal sustainable management practices

Given Ontario Bill 68, titled Modernizing Ontario’s Municipal Legislation Act, 2016, as it relates to the requirement for all municipalities to adopt and maintain policies to protect and enhance the tree canopy and natural vegetation within their communities had until March 1, 2019, I am formally requesting the

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<sup>1</sup> TBM Official Plan page 211-212

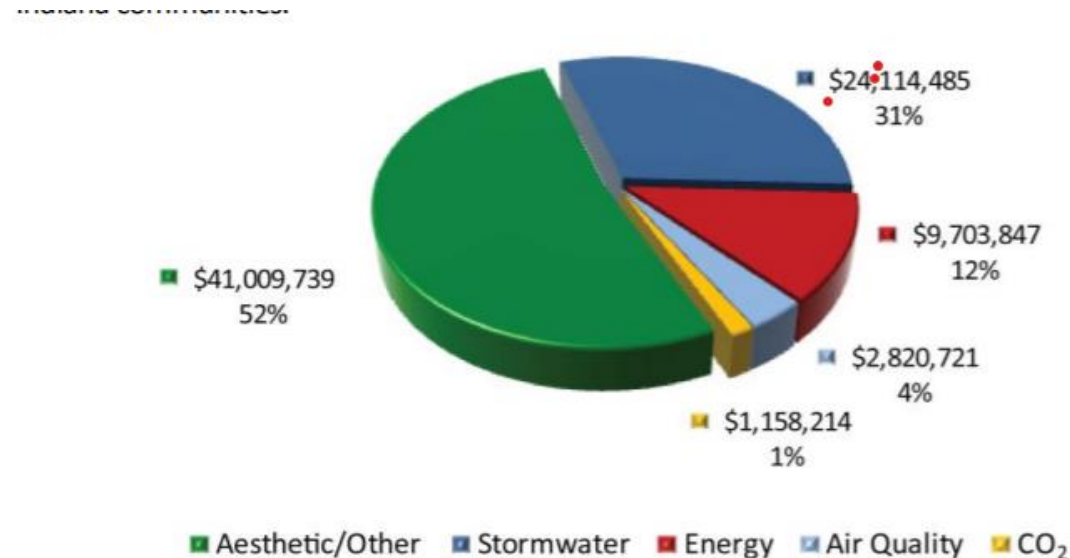
Town to require all planning submissions who have yet to have had a building permit issued **be required to comply to any policies, bylaws arising from this public process.**

Furthermore, Bill 68 requires municipalities to move beyond solely conserving existing trees, and is intended to promote and enhance vegetation, especially in urban areas, to provide a cooling effect and sequester carbon, be a form of green infrastructure, and increase climate change resiliency.

Since the Town's declaration of a Climate Emergency in the Fall of 2019, it is both disappointing and short-sighted that there has been no discussion to my knowledge regarding the inclusion of trees within the development and implementation of the Town Asset Management plan. The management of trees requires a paradigm shift. Trees are infrastructure and therefore a need to transitioning toward resilient urban forest management practices as the creates the asset management plan to be delivered in Q3 2024.

The economic value of trees in stormwater management as other Nat municipalities have done to date, i.e., as illustrated in Figure 1.

**Figure 1: Economic Value of Trees in Storm Water Management**



**Figure 1. Environmental and economic benefits extrapolated for 567 Indiana communities using i-Tree Streets. [http://www.itreetools.org/resources/reports/Indiana\\_Statewide\\_Street\\_Tree\\_Analysis.pdf](http://www.itreetools.org/resources/reports/Indiana_Statewide_Street_Tree_Analysis.pdf) viewed 11 May, 2011.**

The Urban Forest Management Plan for the Town of Collingwood 2020-2030 contained the following recommendations:

- The Town undertake an i-Tree Eco Project to baseline & measure the form, function, and value of the community's urban forest.
- The Town undertake an i-Tree Hydro Project to assess the impact of tree canopy cover on stream flow.

Trees which viewed as **green infrastructure** can deliver cost savings to municipalities such as our town which is already facing infrastructure affordability challenges.

Many municipal water supply, wastewater and stormwater infrastructure systems across Ontario are approaching the end of their planned service life. Replacing or rehabilitating these systems will require major investments. Implementing green infrastructure solutions, however, can deliver significant savings through:

1. reduced capital costs.
2. reduced flood damage costs; and,
3. lower costs associated with maintaining stormwater systems over their lifespan.

Stormwater runoff is one of the leading causes of impairment to waterways and has led to more than 1,500 beach closings at coastal and Great Lake sites in 1998. Trees planted along waterways can remove over 75 percent of the nitrates in the ground water before the pollutants reach the waterways.

- Trees intercept water and store some of it, reducing storm water runoff and the possibility of flooding.
- A typical medium sized tree can intercept as much as 2,380 gallons of rainfall per year<sup>2</sup>.

To support this an example of one maple tree can<sup>3</sup>:

- **Remove** 3,100 pounds of **carbon dioxide** from the atmosphere.
- **Reduce** the emissions of 5,500 pounds of **carbon dioxide** and 30 pounds of **air pollution** from a power plant.
- **Save** 570 kWh of electricity and 20 MMBtu of fuel for **cooling and heating**.
- **Avoid** 4,800 gallons of **runoff**.
- **Filter** 15 pounds of **ozone, nitrogen dioxide, and sulfur dioxide** from the air we breathe.

Upon review of other jurisdiction policies regarding tree preservation, removal, canopy etc. across Ontario there are significant elements missing from the proposed changes to the by law and include this by-law reflecting:

- Protection of trees meaning **all** trees.
- Municipally owned trees are green infrastructure and therefore should be considered a municipal/community asset and in need of protection/preservation.
- The critical role trees play in stormwater management (a responsibility of the Town) and includes:
  - Reducing stormwater runoff by capturing and storing rainfall in their canopy and releasing water into the atmosphere.
  - Roots and leaf litter create soil conditions that promote the infiltration of rainwater into the soil.
  - Slows and decreased the path of rainfall down and recharging of groundwater and temporarily store runoff. The amount of net precipitation has a direct relationship with tree canopy density<sup>4</sup>
  - Trees reduce runoff by millions of gallons and saves municipalities tens of thousands to millions of dollars annually in stormwater management facility cost<sup>5</sup>
  - Transform pollutants into less harmful substances.

As you can see from the documentation above trees play a significant role in stormwater management are therefore partially critical in the parts of the Town i.e., Thornbury West there where is known deficient

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<sup>2</sup> <https://www.citywindsor.ca/residents/parksandforestry/Urban-Forest/Tree-Benefits/Pages/Value-of-Trees.aspx#:~:text=Almost%20everyone%20knows%20that%20trees,their%20wind%20reduction%20in%20winter>

<sup>3</sup> <https://www.itreetools.org/cta-tree-benefits>

<sup>4</sup> R Winkler, The Effects of Forest Disturbance on Hydrologic Processes and Watershed Response, Chapter 7 December 2010

<sup>5</sup> Urban Forest Management Plan for The Town of Collingwood 2020-2030

Stormwater to Street Trees: Engineering Urban Forests for Stormwater Management USDA 2013

stormwater infrastructure. Trees need to be considered part of either grey or green stormwater management systems as it is false to consider to be solely of landscaping value.

With each residential development comes increased impervious surfaces and collectively compound, existing stormwater systems which are often inadequate to handle peak flows. When a system is overtaxed, peak flows back up stormwater and/or cause unnecessary ponding on streets and roads.

#### **Town of The Blue Mountains By-law 2010-68**

With respect to the **Town of The Blue Mountains By-law 2010-68**, the following words do not exist or reflect the intent of Bill 68 amendment and they include.

1. **Enhance, protect, plant, stormwater or vegetation** do not even exist.
2. **Does not apply to a municipal owned tree.**

#### **County of Grey Forest Management By-law, By-law No. 4341-06**

With respect to the County of Grey Forest Management By-law, By-law No. 4341-06, the following words do not exist or reflect the intent of Bill 68 amendment and they include.

3. **Enhance, stormwater or vegetation** do not even exist.
4. **Protect and plant** - are only referenced regarding post building permit situation and another place regarding agriculture.
5. **Does not apply to a municipality.**

#### **Designated authority the Director of Planning and Development?**

While the Staff Report states that similar to many other municipal jurisdictions, the administration and issuance of a 'permit' is at the sole discretion of the Director of Planning and Development Services, Other municipalities have the designated authority resting with the Director of Engineering and/or Operations. This would avoid any conflict of interest with progressing a residential or commercial development the former which is most associated with excessive tree loss and the resulting impact on storm water management. The designated authority, therefore, should rest with the Director of Operations to avoid a conflict of interest and ensure that the impact on stormwater and other infrastructure is appropriately reviewed.

Regards,

June Porter MScN MBA

[REDACTED]  
[REDACTED]