



Risk Management Considerations

Tree Liability

Some of our clients recently requested our risk management advice with respect to their exposure to liability resulting from trees. We decided to share our response with all of our clients. First, it is important to understand what some of the potential tree hazards are that municipalities face.

Consider the following situations:

- Dead, weak or diseased trees which may fall, break or snap under conditions of high wind or sudden impact causing injury or property damage to a third party;
- Low hanging branches which could cause injury to persons walking or running beneath them;
- Tree branches and other foliage obscuring stop signs or other regulatory signs;
- Trees that serve as a climbing apparatus which may permit access to roofs or other undesired locations.

According to the *Ontario Trees Act*, trees located on boundary lines become the responsibility and property of both owners. This responsibility was quite evident in a civil action several years ago that involved one of our municipal clients. A large tree, almost five feet in diameter, was situated on private property, with the exception of two inches, which

touched upon a public road allowance. The judge awarded 65% of the liability for damages suffered by a third party as a result of this tree to the private property owner.

The other 35% of the liability for these damages were assessed against the municipality. There is further case law which deals with tree roots (Willow tree) that interfere with another party's septic system or weeping tile system (nuisance law) in which the owner of the tree was found liable for the damage caused.

The municipality's responsibility for tree maintenance and inspection lies not only with trees that are completely on municipal property, but also to trees that are situated on boundary lines and to trees that are located entirely on another's property, when it or its branches pose a foreseeable danger or threat of danger to persons or property while on the municipal premises.

We recommend our clients follow these risk management guidelines:

1. Establish and implement a tree inspection and maintenance policy for your municipality. This written policy should be approved by Council.

2. Ensure that these policies and procedures are strictly followed. It is important that your policy outlines the minimum acceptable standards, rather than ideal standards, as your municipality will be bound to operate at this level or be found negligent.
3. Implement a regular tree inspection program with systematic documentation of the inspections including the resulting maintenance or actions taken.
4. Train the responsible staff in recognizing the signs of tree hazards, including detection of rot or disease which may reduce the structural soundness of a tree, and other associated dangers.

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