



Trees

Boundary Trees vs Border Trees: Knowing the Difference Can Help You Avoid Legal Headaches

Trees are an important part of real estate, so it's useful to understand the various rules and regulations governing them. Legally speaking, there are two types of trees in Ontario – boundary trees and border trees – and knowing which is which on your property affects your maintenance and legal obligations. Here are their differences:

Boundary trees are trees with trunks or visible roots that grow on a property line and are governed by Section 10 of the *Ontario Forestry Act*. The Act stipulates that boundary trees may only be planted with the consent of both owners, defines a boundary tree as “a tree with a portion of a trunk on one property and another on another property,” and makes it an offence to injure or destroy a boundary tree without the consent of both property owners. Recent case law dictates that the trunk of a tree is not only determined by the trunk at ground level, but also by its root collar and canopy of branches, leaves and foliage. Both owners of boundary trees are deemed responsible for their maintenance. Notably, in cases where a permit has been obtained from a local municipality to injure or destroy a boundary tree, the consent of the neighbour must first be obtained prior to the injury or destruction.

Border trees, on the other hand, are trees whose trunks are located entirely on one property at ground level but whose canopy of branches or root collar encroach another property. Border trees are subject to the law of nuisance, which provides that where the parts of a border tree encroach another property and are creating a real nuisance to the neighbouring property owner or cause damage, the neighbouring property owner can exercise a self-help remedy to remove the encroachment. However, the instigating neighbour may only remove that portion of the border tree that is situated on their property. Otherwise a claim for trespass may exist.

Ontario municipalities such as the City of Brampton require property owners in its jurisdiction to obtain a legal permit prior to the removal of a tree whose trunk exceeds 30 centimeters in diameter that is located on private property. In order to protect its tree canopy, the City of Toronto goes even further. It requires property owners to secure a permit prior to any removal activity that may injure a private tree whose trunk exceeds 30 centimeters on private property. In addition to these municipal rules, there may also be statutory and common law rules governing both tree types, boundary and border.



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In essence, the specific type of tree that happens to reside on private property will dictate the actions legally available to the property owners where these trees are located. Owners may elect to address the particular tree issue on their own, or they may simply need consent from their neighbour. Alternatively, municipal or other governmental authority approval may be necessary depending on the circumstances.

Generally speaking, to avoid any claim being made against you and to avoid being in violation of any municipal ordinance, property owners are strongly advised to exercise due caution and consult a professional arborist for an opinion. In the event of a dispute arising between neighbours where legal advice is appropriate, we recommend you should contact De Francesca Law at the earliest opportunity. This will allow us to assess the matter and draw up the necessary notice to the other party, or paper any maintenance or other suitable arrangement that will resolve the issue quickly.

