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### More on Municipal Tree By-Laws

Let's think about the promotion of private property tree by-laws before we rush off in an almost unenforceable direction!


*by Art Drysdale*

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Art Drysdale, a life-long resident of Toronto and a horticulturist well known all across Canada, is now a resident of Parksville, British Columbia on Vancouver Island, just north of Nanaimo. He has renovated an old home and has a new garden there. His radio gardening vignettes are heard in south-western Ontario over two radio stations: Easy 101 FM out of Tillsonburg at 2 PM weekdays and CD98.9 FM out of Norfolk County at 11:40 AM weekdays.

Art also has his own website at <http://www.artdrysdale.com>




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In my discussion of municipal by-laws governing/controlling the removal/damaging/pruning of trees on private properties, begun here last week, I said that I now oppose all such by-laws.

I realize that this position will not exactly endear me to professional arborists, or for that matter, to amateur "tree-huggers" who seek to protect all trees! But, let me in any case, outline to you some of the happenings that I have observed in jurisdictions where such by-laws exist.

The most important example is one that I have been involved in, both in Toronto and elsewhere. The situation involves commercial developers wanting to take down any number of trees in order to build usually a large condo/apartment complex on a lot. If they cannot easily gain permission, or fail to gain permission to cut the trees, they simply go in suddenly and cut them all as quickly as possible. The city or other complainants then sue the developers who inevitably are operating under a numbered company. The developers use their lawyers to delay the case as long as possible causing the plaintiffs sometimes double-digit court appearances and the case only proceeds when the developers may already have substantial deposits



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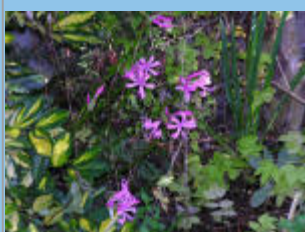
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*Not having any photos to illustrate my topic this week, I decided to include some recent photos of our fall garden. Above, our two firethorn (Pyracantha coccinea) colours; and believe it or not our Cyclamen hederifolium are still in bloom—that is virtually two months; and this is our only mound-shaped Aster (Michaelmas daisy) although we have a good number of the taller growing species. Below, Schizostylis coccinea (Kaffir lily) [by the way, the plant is now reclassified as Hesperantha coccinea] growing here among two ornamental grasses near our large pond, and the next shot is a close-up of the flowers—it is a native of South Africa; and Nerine bowdenii, the only hardy Nerine growing against my office wall, and finally a close-up of same. Author photos.*



from buyers/renters in order to pay their lawyers.

When the case does proceed, the lawyers for the developers plead ignorance not having operated in the particular municipal jurisdiction previously (under that particular numbered company). This, of course, is untrue, but the lawyers are very good at presenting just the right witnesses (who often come from other jurisdictions in the province or even from other provinces) who can legitimately claim to be ignorant.

The result often is that the numbered company gets fined, but only a minimal amount based on the "first-time offence by an unknowing official of the developing company." This still happens frequently and many developers have just the right lawyers who know they can eventually beat the rap, so to speak. And, the minimal fine is just tacked onto the sales of the final units offered for sale.

That is one scenario I have seen unfold often during my 40 years involved with this concept in Toronto, where I was several times involved as an "expert witness" on the behalf of those trying to sue developers for destroying trees—including a row of Norway maples in front of the Canadian National Exhibition Coliseum when it was to be enlarged for what is now called the Direct Energy Centre.

Another common scenario having to do with private homeowners, or their builders, also still applies today with the presence of the City's Private Tree By-law.

To quote the City, "The Private Tree By-law was adopted to preserve significant trees on private property in the City of Toronto, to assist in sustaining the urban forest in the City and to educate individuals with respect to tree protection measures and alternatives to tree injury and destruction. This by-law is formally known as City of Toronto Municipal Code, Chapter 813, Article III, 'Private Tree Protection,' and is commonly referred to as the City's 'Private Tree By-law'. This by-law regulates injury or removal of privately owned trees which measure 30 cm in diameter or more as measured at 1.4 m above ground level."

In Kitchener, Ontario, a well-forested city, their by-law is a little less stringent in that it only applies to trees on properties larger than 0.405 hectares (one acre) in size. That is a significant difference. Right here in Parksville for example, the uproar over the cutting of a large number of huge Douglas firs (and possibly Western cedars) that prompted me to write what I did last week, as well as this entire item, would have occurred in any case, be-cause most parcels of land in our subdivision (located within a regional district, not an incorporated city or town).

Most such tree by-laws call for homeowners wishing to cut down or prune trees to obtain a statement from a registered arborist (such as a member of the International Society of Arboriculture—formerly the International Shade Tree Conference of which I was a member) which statement must outline the state of health of the tree.

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Generally if the tree is in a major state of decline, or is infested with a disease that will kill the tree in a relatively short time, or if the tree poses a danger to life (a very important consideration ever since a young boy was killed by a tree falling on him during a 2004 hike through a Royal Botanical Gardens forested area), or if a tree is infested with certain insect species such as the Emerald ash borer.

However, if none of those situations applies, most cities with tree by-laws will not issue the needed permit for tree removal (or pruning). That is where some perhaps-not-so-reputable tree companies come into the picture, by promising to obtain a permit for the homeowner, upon payment of a higher fee. They then either damage the tree, usually with a chemical injected to the trunk, or perhaps by buying a permit from a "friendly" official in the town or city hall. Yes, that happens, perhaps infrequently, but it does happen.

There are also other scenarios where individual homeowners or building contractors "get around" the regulations, again, just going out and cutting the tree, and then pleading ignorance and taking a chance with the judge when and if the City sues.

With all of these scenarios, I many years ago came to the conclusion that private tree by-laws are money-making schemes for lawyers, and some others! That is why I oppose all of them. The City of Toronto, for example, says it wishes to increase the city's canopy cover from its current 17% to 30-40%. Permits to destroy trees are issued conditional upon planting replacement trees.

One other factor that does not get mentioned often is the environmental contributions trees make to the city environment. We now constantly hear about the purifying of our air that trees do, but one point that is not often mentioned is that very old, mature trees, actually do a relatively poor job of air purification. Whereas newly planted, younger trees are major contributors to air purification. So, my suggestion is that City arborists should be joining with the cities and encouraging tree planting. This too, is going on in Toronto, although some of the ways it is being accomplished I consider quite controversial—the mass planting of saplings just about 75 – 90 cm apart in vacant valley areas for example. But, that is yet another story.

As for the tree cutting that occurred here in San Pareil several weeks ago, I totally disagree with the demand for a tree-cutting/maintenance ban here in the Regional District of Nanaimo. We here live in a forest! We too should be promoting tree planting, but let's leave private property owners alone. The RDN is already hiring people with what appears to be reckless abandon, and I don't think we need new staff to administer a tree by-law that at best would be very difficult to enforce.

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