

11. Re: Complaint by Mrs. I. Owens
on Lombardi Poplar Trees on Neighbour's Property.

Mrs. I. Owens placed a communication before Council on July 12, 1971, wherein she complained about the nuisance problem she has with three large poplars growing on the property line and which belong to her neighbour. She asked that a bylaw be prepared to protect her property and other properties inflicted with the same problem. The Solicitor was asked to determine whether the type of problem mentioned could be classified as a public nuisance under the provisions of the Municipal Act.

While we feel that this is more a civil matter than anything else, the Solicitor points out that Section 870(k) of the Municipal Act reads as follows:

"The Council may by bylaw
(k) require the owners or occupiers of real property, or their agents, to clear such property of brush, trees, noxious weeds, or other growths; and for providing that in default of such clearing the municipality, by its workmen and others, may enter and effect such clearing at the expense of the person so defaulting; and for providing that the charges for so doing, if unpaid on the thirty-first day of December in any year, shall be added to and form part of the taxes payable in respect of that real property as taxes in arrear;"

The Section appears to be broad enough to allow Council to legislate in such cases. In order to have an effective and enforceable bylaw, some controls will have to be spelled out. Where will the line be drawn? If we refer to such problems as "nuisances" and a case is contested, then the judge would have to determine whether or not it is a "nuisance". This may be where we would have a real problem. The subject can indeed become quite complex.

Many of the day to day problems at the Municipal Hall or with the Parks Department, involve neighbour differences in connection with tree problems of one sort or another. The complaints vary anywhere from the neighbour's trees simply overhanging a fence and bothering the caller, to infestations of aphids and caterpillars, dropping branches, roots disrupting retaining walls, roots plugging sewers and drains, hazards due to height and type of tree, etc. In most cases a cooperative approach between the two parties concerned can resolve the problem. Also, the Municipality has thus far attempted to avoid these troublesome areas because of the fact that an attempt is made in some cases to use it as a wedge or hammer in some kind of neighbour quarrel which may or may not be related to the tree problem at hand.

RECOMMENDATION:

THAT the type of problem in question be continued to be treated as a civil matter between the two parties concerned.