



# HERITAGE TREES PROTECTION

## LEGISLATIVE TOOLS

*In May 2006, the Ontario Urban Forest Council ([www.oufc.org](http://www.oufc.org)) through its working committee the Ontario Heritage Tree Alliance, issued *Securing the Future of Heritage Trees: A Protection Toolkit for Communities*. What follows is Section E of this report, a review of the key pieces of legislation in Ontario that can be used by municipalities and residents to protect trees. This includes the Planning Act, the Municipal Act, the Ontario Heritage Act, the Conservation Land Act, and the Forestry Act plus a short section on tree protection issues in Northern Ontario. Since protecting trees often means arguing the case for saving trees or more precisely, quantifying the benefits of trees, included below is a section that will assist you in presenting a case for the value of trees. The Appendices that follow provide sources of heritage tree protection by-laws, tree protection easements and other useful resources. All are available from ~ Barb Heidenreich [bh@fernhill.com](mailto:bh@fernhill.com) 28/02/2006; 26/11/2008*

### Introduction

It is often expected that trees, woodlands and forests will be respected and remain where they stand just because they are living things that have been there for years, sometimes hundreds of years. However, they are often considered “in the way”, often harvested for monetary gain, occasionally damaged, neglected and then they die. Trees don’t have “rights”; the person who owns the land where they grow generally owns them. However the ecological benefits and values that trees provide go well beyond benefiting only the landowner. They extend to society in general. That is why we should all be tree champions (“tree huggers” and “public interest advocates”) on their behalf. Only caring owners and the vigilance and action of individuals like yourself will ensure that future generations can enjoy the trees that mean so much to you.

Since trees are so important to society in general, local governments have been given the ability to protect them with tools available as provincial legislation. The *Planning Act* and Sections 135 - 141 of the *Municipal Act* allow municipalities to protect trees very effectively. It is up to the community to ensure these tools are used. Tree protection begins long before the whine of the chainsaws. Municipal councils are there to look after the public interest, and council agendas respond to public demands. So, the quality of life in your community is in direct relation to the effort residents put into providing input into Council decisions.

The overarching public land use document guiding how your community will look in the future is the community Official Plan. This requires residents to attend public meetings in order to ensure that natural areas and special trees are identified for protection in the Schedules and policies of the Official Plan. However, protection efforts do not stop once the Official Plan is approved. Community residents need to review all Council agenda for development applications that may harm trees. They need to speak out and insist that community concerns be addressed and conditions are attached to any development approvals so that important natural features are protected.

Above all what is needed is a proactive partnership with Council that results in the adoption of comprehensive natural heritage Official Plan policies, tree protection by-laws and heritage tree protection initiatives so the rear guard adversarial approach to tree protection becomes a relic of the past and those unique natural areas and individual trees that make your community special have a secure future.

What follows is a review of the most important sections for tree preservation of the *Planning Act, 1990*, the *Municipal Act, 2001*, the *Ontario Heritage Act, 1990*, the *Conservation Land Act, 1990*. Other relevant pieces of legislation such as the *Forestry Act, 1990*, *Niagara Escarpment Planning and Development Act, 1990*, *Oak Ridges Moraine Conservation Act, 2001*, *Greenbelt Act, 2005*, *Places to Grow Act, 2005* are less geographically general or tree specific.

### **The Planning Act, R.S.O. 1990**

A first line of defence in natural heritage protection is the *Planning Act* which requires Councils to prepare a local municipal **Official Plan** and **Zoning by-laws**. These are the most important tools that will shape what happens on the ground in your community. Official Plans give a “vision” of how your community will look in the future and this vision is reviewed every five years, which is a requirement under s. 26(1) of the *Planning Act*. If your “vision” has natural areas, forests and heritage trees, make certain that your Official Plan states as “policies”, that these features are to be protected (see APPENDIX A). Be involved in the process and make certain that the Schedules attached to your Official Plan *designate* these natural features to be protected by recognizing them with designations such as “environmentally sensitive”, “natural heritage protection”, “significant woodlands”, etc. Ensure that heritage trees are recognised in the definition section of the Plan and covered in the protection policies written as the text part of the Official Plan even if you have not as yet gone through the process of a “Great Community Trees Hunt”. The municipalities’ comprehensive zoning by-law will need to confirm these conservation land use designations. Your allies in natural areas and heritage trees identification and advocacy for inclusion and protection in the Official Plan are local naturalists clubs, the Municipal Heritage Committee, the Environmental Advisory Committee, Ontario Nature, local Woodlot Associations, the local Stewardship Council and your neighbours.

Any changes to the Official Plan and Zoning-By-law are required to go through a public amendment process. It is important to know how this process works and information can be obtained from community planning staff and local councillors. Knowing how green fields are converted into subdivisions and involving yourself in the land use planning process in your community, is the only way you have of ensuring that the natural areas that define your community are protected and stay protected...unless you plan to buy them all. Quality of life in your community is **your** responsibility.

How does the *Planning Act* work? Check it out...

[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90p13\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90p13_e.htm)

This is actually a very readable piece of legislation. The *Planning Act* compels municipalities to look after their ecological systems and provides many tools for accomplishing conservation throughout the municipality. The most important are listed below (quotes from the *Planning Act* are in italics):

The “*protection of ecological systems, including natural areas, features and functions*” is a statutory responsibility of government under Section 2 (a) of the *Planning Act*. Since trees are an integral part of ecological systems and natural heritage areas, their consideration in any land use decision is required by this statute.

**Provincial Policy Statements** (PPS) issued under Part I, section 3 of the *Planning Act*, came into effect March 1, 2005. The current PPS have under section 2.1 a requirement that Councils make decisions that protect the province’s “*natural features... for the long term*”. Section 2.6.1 also requires that “*cultural heritage landscapes shall be preserved*”. Cultural heritage landscapes are further defined (p. 29) as being a geographic area which has a blend of cultural and natural features that are valued by the community.

In addition to declaring that ecological systems and natural features must be protected, there are several other sections of the *Planning Act* that explicitly provide for tree protection.

Under Part III of the *Planning Act*, municipalities are required to develop an **Official Plan**, which, together with its land use schedules (maps), describes the values of your community and how the land in the community will be used in the future. Heritage trees, natural heritage systems, significant woodlands, wetlands and environmental features and functions should all be included and defined in the Official Plan. Official Plan “designations” contain two key components:

- existing and future land use “designations” which are given a name, defined and mapped (such as “Significant Woodlands”, ESA – Environmentally Sensitive Area, etc.) and,
- land use provisions which set forth policies for allowable activities in the land use designations that will be implemented through zoning by-laws (**APPENDIX A**). The policies should be forceful about protecting natural features and landscapes and these areas should be mapped on the accompanying schedules that make up part of the Official Plan.

Under Part V, Section 34 of the *Planning Act*, municipalities are able to pass comprehensive and site specific **zoning by-laws**. The *Planning Act* specifically provides for the passing of zoning by-laws to conserve the municipality’s natural features. Section 34 (1) sub-section 3 allows municipalities to prohibit (under 3.1) “... *any use of land and the erecting, locating or using of any class or classes of buildings or structures on land that is contaminated, that is a sensitive ground water recharge area or head-water area or on land that contains a sensitive aquifer*” and, under sub-section 3.2, “*any use of land and the erecting, locating or using of any class or classes of buildings or structures within any defined area or areas, (i) that is a significant wildlife habitat, wetland, woodland, ravine, valley or area of natural and scientific interest, (ii) that is a significant corridor or shoreline of a lake, river or stream, or (iii) that is a significant natural corridor, feature or area.*”

Part V, Section 41 of the *Planning Act*, provides for **Site Plan Control** which allows municipalities to examine any development application and ensure among other site plan details: which trees get protected, where new trees should be planted. This is provided for under Section 41 (7) (a) 6 that specifically covers a site’s trees, hedges and shrubs. Site plans are negotiated between the developer and municipality and public input is at the discretion of council. Public input can be forced through an Ontario Municipal Board (OMB) hearing on an amending zoning by-law if required, but it is far better to work with Council to ensure they use their power to secure what the community values.

Further, under Section V, Section 42 (1) “as a condition of development or redevelopment of land, the council of a local municipality may, by by-law applicable to the whole municipality or to any defined area or areas thereof, require that land in an amount not exceeding, in the case of land proposed for development or redevelopment for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent of the land be conveyed to the municipality for park or other public recreational purposes.” This **parkland dedication requirement** for any development application is also a useful provision for protecting a grove of heritage trees or natural features as a condition of development. In every application that involves natural heritage features, residents need to be vigilant that the municipality does ensure the features are protected as part of a condition of approval or by being set aside as a parkland dedication for the community. There are provisions in the Act (Section 42 (6) ) that allows Council to opt out by accepting “cash-in-lieu” of the parkland dedication requirement.

Part VI of the *Planning Act*, outlining **subdivision control** also provides for the protection of natural heritage features. Section 51 which covers the subdivision approval process requires developers under Section 51(17) to describe all natural features such as watercourses, drainage ditches, wetlands and wooded areas within or adjacent to the land proposed to be subdivided. Then council under Section 51(24) is obligated when they consider whether to approve the plan of subdivision, to determine whether the application conforms to the Official Plan, and appropriately conserves “*natural resources*” and has regard for flood control.

Council is also mandated to attach any reasonable conditions under Section 51(25) to the approval of the plan. These conditions can include the protection of all natural heritage features including trees. Under Section 51.1(1), Council is allowed to impose, as a condition of subdivision approval, a **parkland dedication** comparable to that of Section 41 which can be used as an additional tool for tree protection if such sites have not been previously set aside and protected through the Official Plan process. However, Section 51.1 (3) also provides for “cash-in-lieu” (like Section 42 (6) ) so a watchful public eye and local offers to become “securement” and “stewardship partners” for any parkland set aside may be required to encourage conservation by those municipalities who are reluctant to add “pocket parks” to their parkland responsibilities.

#### **YOUR ACTION PLAN:**

- ✓ *Familiarise yourself with the “tools” under the Planning Act;*
- ✓ *Watch your local paper and Council agendas and attend any public meetings related to development applications, zoning by-law amendments and any updates or amendments proposed for your municipality’s Official Plan. Become a tree advocate. Remember, no appeals of Council decisions are allowed if you fail to be part of the public process. So you have to register at public meetings and make submissions.*
- ✓ *Get to know your planning staff, Council, by-law enforcement officer, clerk, conservation officer, arborist (if there is one) and Municipal Heritage Committee (volunteer for this Committee), and make them aware of your interest in trees and offer to be involved in any process affecting trees;*
- ✓ *Ensure that your municipality’s Official Plan has strong natural heritage protection policies and specifically ensure that woodlands and heritage trees are defined and protection policies are in place (APPENDIX A);*
- ✓ *Ensure that areas designated for development have the significant existing trees protected (and more planted) which means ensuring tree protection is part of the conditions of draft plan approval and site plan control;*
- ✓ *Find out about the activities and interests of your local Stewardship Council*

<http://www.ontariostewardship.org/ontarioStewardship/home/osIndex.asp> or  
<http://www.stewardshipcentre.on.ca/stewardshipcanada/home/scnONIndex.asp>

- ✓ Monitor Council agendas and attend any meetings that involve development applications that may affect your municipality's trees;
- ✓ If your zeal takes you as far as an Ontario Municipal Board hearing as either a "participant" or full "party" make certain you are familiar with the Boards procedural rules (see the OMB web site: <http://www.omb.gov.on.ca/Hearing/hearings.html> ).

As a "party" you have obligations to follow Board procedures and have appropriate "expert" witnesses to give the Chair evidence on the biological, economic and historical importance of the trees affected by the development proposal. In addition to arborists, appraisers, appropriate witnesses can also include long time residents and other community members.

Any resident may obtain "participant" status, and residents are perfectly entitled to make submissions on the importance of the (subject) trees to themselves and the community. Only experts can give evidence on their biological and economic value, but you and other residents can speak with authority about the significance of trees to your psyche and to the character of your community.

- ✓ Speak out for your community's trees, they cannot speak for themselves!

### **The Municipal Act, 2001, S.O. 2001**

Even more directly related to tree preservation is Ontario's *Municipal Act*. Under Sections 135 - 138, municipalities are able to pass by-laws that can specifically "prohibit or regulate the destruction or injuring of trees" (including heritage trees) and substantial fines are possible under Section 138, for violations. The powers that a municipality has to protect trees by a by-law passed under Section 135 of the *Municipal Act*, are significant and the relevant sections of the *Municipal Act* are cited in APPENDIX B.

Many municipalities have enacted by-laws ensuring that trees greater than a specific size are protected on public and privately owned land using this tool. Examples of municipal tree protection by-laws are included in APPENDIX C.

### **YOUR ACTION PLAN:**

- ✓ Ask your municipal by-law officer, the Clerk or search on-line for a copy of your municipality's tree protection by-law, if your community has one;
- ✓ Find out more about tree cutting by-laws at [www.ontariowoodlot.com](http://www.ontariowoodlot.com)
- ✓ Find out how and where trees are protected and what the deterrents are used to ensure trees are not injured or cut down. Find out if heritage trees are defined and included. Compare it to the by-laws included in APPENDIX C. Your municipal heritage trees protection by-law should have the following standard contents:

#### **Definitions:**

- what is a "Heritage Tree"
- registry (this enables a list to be maintained by the municipality...a first step in "designating" them for protection once they have been identified).

**Prohibitions:**

- prohibitions against cutting down “designated” trees without a permit;
- prohibitions against tree damaging activities;
- prohibitions against specific activities taking place around the tree, see City of Toronto (APPENDIX C.4)

**Exemptions**

- exemptions vary from by-law to by-law, but generally all cover the same exemptions;
- the process for obtaining a permit to cut trees;
- a fee schedule for permits, fees range between \$25.00 - \$100.00;
- conditions where trees must be replaced when cut down;

**Care Expectations**

- in most by-laws, inspections are carried out by an officer who is appointed by the city council (see Designation of Officers in the City of Barrie Tree-protection By-Law 2005-120 APPENDIX C.3)
- monitoring processes for designated trees;
- the process for completing maintenance on trees;

**General Protection Policies:**

- conditions where trees in areas of environmental importance can or cannot be disturbed;
- the requirements for tree management plans for larger developments;

**Enforcement:**

- enforcement and penalty provisions;
- enforcement of the by-laws, are usually completed by designated officers
- fines for offences range between \$500 - \$2,500 per tree and \$10,000 - \$25,000 for a group of trees. For corporations (See City of Toronto APPENDIX C.4) the fines are much higher, ranging from \$5,000 - \$10,000 per tree and \$50,000 - \$100,000 for a group of trees.

**Schedules:**

- schedules outlining the location of significant trees in the municipality;
- types of native trees suitable for planting and replanting;
- application requirements (information required in order to grant permits)

- ✓ *Find your “partners” in this process which should include sympathetic Council members, the Municipal Heritage Committee:  
[http://www.culture.gov.on.ca/english/culdiv/heritage/lacac\\_advisory.htm](http://www.culture.gov.on.ca/english/culdiv/heritage/lacac_advisory.htm)  
As well as residents and neighbours, non-profit groups, heritage planners, land use planners and parks staff, naturalist clubs, etc*
- ✓ *Ask yourself: are the provisions of our tree protection by-law adequate? Are Heritage Trees included? If you don't have a tree protection by-law or your by-law doesn't include “Heritage Trees”, you have your work cut out for you for the next year!*
- ✓ *Start a “Great Heritage Trees Hunt”...identifying and selecting the heritage trees of your community and find landowners interested in seeing their heritage trees protected;*
- ✓ *Ask Council to set up a “Registry” (by by-law or as an Appendix to your Heritage Trees By-law) and request that these heritage trees be nominated for placement on the Registry.*

- ✓ *Request that Council add to the current tree-protection by-law or establish as part of a new tree protection by-law, a Heritage Trees Conservation By-law which will define “heritage trees” (see Professor Emeritus Paul Aird’s definition), recognise the Registry and designate for protection some or all of the trees nominated and placed on the Registry (APPENDIX C.1\_Gananoque and C.3\_Barrie, Hamilton includes examples of a Heritage Trees By-law and examples of a Tree Conservation By-law with a “Heritage Trees” component. Note: examples of Tree Protection By-laws affecting public and private property include Barrie, Toronto, Mississauga, Pickering, County of Middlesex)*

## **The Ontario Heritage Act, R.S.O. 1990**

### **Municipal Heritage Committees and Heritage Trees’ Protection**

by Robert Saunders, Past President, Community Heritage Ontario

Community Heritage Ontario (CHO) is the association of municipal heritage committees established under the *Ontario Heritage Act (OHA)*. A municipal council may appoint such a committee to advise it on the establishment of an inventory of heritage properties, the designation of properties of cultural heritage interest, the creation of heritage conservation districts and such other related matters as the council might assign through its by-law. There are approximately 125 municipal heritage committees in Ontario. The vast majority are actively involved in identifying and trying to protect the properties of cultural heritage interest in their communities. 110 municipal heritage committees are members of CHO.

The key word in identifying and preserving our cultural heritage is “property”. The property should in some way be identified with the culture, the society and the history of a community. There should be meaning to the property in terms of the cultural values of the community. In the early years of the *Ontario Heritage Act* and the work of local architectural conservation advisory committees (LACACs), the focus of the effort was on architecture and other structures i.e., the built and visible heritage. But the language of the *Act* was “property”. Buildings and structures are simply improvements to the property.

As interest in natural heritage grew through the 1990s, some committees and councils began to look at the identification and possible protection of *cultural heritage landscapes*. Interest in heritage conservation districts increased because of the realization that individual properties are best protected within a sympathetic context and that tools under the *Planning Act* do not deal with design and aesthetic concerns as neighbourhoods and communities change. Both of these factors increased awareness of the importance of the streetscape and the landscape and within these the role that trees play. Several property designations in their statements of reasons for the designation mention the trees on a property as part of its importance.

The most notable of these was in Scarborough where in 1996 the council, on the advice of its LACAC, decided to designate a property which had been the site of a well known country inn in the 1920s and early 1930s. On the property were a number of old black walnut trees which had grown in the Carolinian environment of the area, the watershed of the Highland Creek and these were identified in the statement. The inn itself had burned down many years ago. The owner, a developer looking to build large homes on the property, objected and the issue was brought to a Conservation Review Board hearing. The advisory ruling of the tribunal supported the Scarborough council and committee and the Council designated the property specifically protecting the trees. This decision made it clear that trees could be included in a designation as important to the heritage of the property. The property is now under development but the developer is working with the city’s forestry department to protect the root system.

With an increasing number of heritage conservation districts being established, the character of the landscape in those areas is an important element in the districts, particularly in residential and small community settings. The plans and guidelines for districts in most cases now address the quality of the landscape noting the type and age of the trees. A plan such as that for Whitevale specifically mentions the trees and canopy along the main street. The plans for the Cabbagetown districts (Toronto) also speak of the importance of the trees to the area.

The recently issued (2005) Provincial Policy Statement under the *Planning Act* states “*Significant built heritage resources and significant cultural heritage landscapes shall be conserved*”. The definition of cultural heritage landscapes is clear that natural features of such landscapes are integral to the landscape.

In other words, with the direction that heritage preservation is now moving in Ontario, the interest in heritage conservation districts and cultural heritage landscapes is leading towards greater concern for natural heritage as part of the cultural heritage. And more and more municipal heritage committees are thinking this way ~ a community’s visible heritage is more than its buildings and other structures.  
~ October 2005

The objects of the *Ontario Heritage Act* (OHA) specifically provide under Section 7(d), a role for the Ontario Heritage Trust “*to preserve, maintain, reconstruct, restore and manage property of historical, architectural, archaeological, recreational, aesthetic, natural and scenic interest*”. The word “natural” encompasses trees that possess natural value while “historic” encompasses trees that have historical associations and cultural values.

The OHA has four distinct tools that potentially can be used to protect heritage trees:

- (a) protection using a conservation “**easement**” held by the Ontario Heritage Trust as provided for under Part II, Section 22, can protect **cultural** and **natural** heritage values;
- (b) protection using a conservation “**easement**” held either by a municipality as provided for under Part IV, Section 37, can protect trees of **cultural** heritage value;
- (c) protection by “**designation**” under Part IV, Section 34.5 which enables “the Minister” (Minister of Culture) to protect properties of **cultural** heritage value or interest of provincial significance;
- (d) protection by “**designation**” under Part IV, Section 29, which enables the municipality to conserve properties of **cultural** heritage value or interest and prevent their destruction.

Trees can be protected using this Act even if there are no built structures of historical significance associated with the tree. However, only an Ontario Heritage Trust conservation easement would be able to protect a tree if the tree did not possess “cultural heritage” value.

As tools, heritage “designation” and tree specific “easements” have been infrequently used to protect trees of “natural” or “cultural heritage value”. The Ministry of Culture’s Ontario Heritage Properties data base indicates that the following trees are on the provincial Registry and protected by by-law under Part IV of the *Ontario Heritage Act*:

- The Comfort Sugar Maple Tree in Pelham, Niagara Region (OHA Part IV)
- Carolinian Oak Tree on Mill Road (north side), 350 metres west of CPR, Colborne Township, Huron County (designated January 21, 1992 OHA Part IV).
- Double-trunked grafted sugar maple tree on bank of Welland River, Binbrook, Glanbrook Township, Hamilton-Wentworth Region (designated April 5, 1982 OHA Part IV).
- Jacob Fisher Oak Tree, 300 Trowers Road, Woodbridge, Vaughan, York Region (designated September 11, 1991 OHA Part IV).
- Osage Orange Tree Hedgerow on west side of Torbram Road running north from Old School Road in Caledon, Peel Region. A North American species rare in Caledon (not native to Ontario) estimated to be planted in 1880 as a 'natural' fence and regarded as the last Osage Orange hedge in Peel (designated September 27, 1999 OHA Part IV).
- Falcon Inn Site (4 Black Walnut trees; 1 Sugar Maple) on Kingston Road, Scarborough, Toronto (designated January 19, 1995 OHA Part IV) see APPENDIX D for the CRB decision reports used in this designation and protection process.
- Copper Beech Tree, Drummond Hill Cemetery, Niagara
- Pine tree (and house), 25 Sydenham Street, Flesherton, Grey (designated July 9, 2001 OHA Part IV)
- Cottonwood Tree (Manor House and Stable), 153 High Street, Sutton, Georgina, York (designated April 25, 1991 OHA Part IV)
- Allanburg Heritage Oak Tree, Falls Street North, Thorold, Niagara (designated May 7, 2002 OHA Part IV) (white oak over 350 years old)
- Maple Cottage (with the "Muir Maple" ) 62 Laing Street, (designated September 14, 1992 OHA Part IV ) see APPENDIX D for City of Toronto By-law 567-92

#### **YOUR ACTION PLAN:**

- ✓ For more information on **designation**, check out the Ministry of Culture's site: <http://www.culture.gov.on.ca/english/culdiv/heritage/hptrm.htm>
- ✓ For more information on **easements** contact the OHT website at: <http://www.heritagetrust.on.ca/>
- ✓ APPENDIX D provides the documents for the Falcon Inn Walnut Trees case study for you to review and the By-law designating the "Muir Maple" thought to have inspired the song "the Maple Leaf Forever"..
- ✓ APPENDIX E provides a sample conservation "easement" agreement developed by a municipality to protect a tree. The "easement" approach to protection, whether under the OHA or under the Conservation Land Act has the same principles and is described in the next section.

#### **The Conservation Land Act, R.S.O. 1990**

The *Conservation Land Act* also allows property owners to grant a conservation easement agreement which contains covenants (restrictions) agreed to by the land owner and the conservation organisation holding and monitoring compliance with the conservation easement agreement. The covenants can be tailored to protect heritage trees on a property and may require a degree of stewardship and care by the owner. The conservation easement agreement would be held by a qualified "conservation body" which could include a Conservation Authority, charitable conservation land trust, municipality, etc. The contents of such a conservation easement agreement and its restrictive covenants have to be agreed to

by the owner and the conservation body that holds the conservation agreement and has rights of access on the property (an “easement” right) in order to monitor compliance with the covenants of the agreement.

So the conservation easement agreement would be drafted to include monitoring protocols and penalties for violation of the covenant(s). To ensure protection in perpetuity the agreement gets registered on title in a land registry office and binds all future owners of the property.

As a natural heritage protection tool, conservation easement agreements are extensively used by provincial land trusts and conservation authorities to protect natural heritage areas on private property. The land continues to remain in private ownership in the future. If the conservation agreement removes “development rights” on ecologically significant areas such as woodlots, the landowner may be eligible for tax benefits if a conservation agreement is donated to the charitable land trust. Such a tool has considerable potential to protect “heritage trees” on private property where no tree protection by-laws exists. It is however a voluntary tool, and requires a landowner willing to enter into such an arrangement that encumbers their land in the future and it requires a “conservation body” that will hold the conservation easement agreement, monitor compliance and may be willing to legally enforce the covenants of the agreement.

#### **YOUR ACTION PLAN:**

- ✓ *Look up the Ontario Land Trust Alliance web site and find the conservation land trust operating in your area: <http://www.ontariolandtrustalliance.org/members.htm>*
- ✓ *Find out how easements work and discuss this protection tool with your local land trust and your local Municipal Heritage Committee ...you need a non-profit registered conservation charity to agree to hold the easement and monitor compliance with its terms. Designation and covenants protecting heritage trees may give a slight property tax break under Section 365.2 of the Municipal Act and see also the “Guide” put out by the Ministry of Culture: <http://www.culture.gov.on.ca/english/culdiv/heritage/hptrm.htm>*
- ✓ *For an example of a “Heritage Tree” covenant/easement see APPENDIX E.*

#### **The Forestry Act, R.S.O. 1990**

Under the provincial *Forestry Act*, the Ministry of Natural Resources can enter into agreements with private woodlands owners and offer grant programs, while municipalities can pass by-laws to acquire land for forestry purposes and enter into agreements for reforestation, tree conservation and tree planting. Contraventions of the *Act* are provided for through imprisonment or fines up to \$20,000. Two definitions within the *Forestry Act* are important as they are used in other legislation. They are the definition of “woodlands” and the definition of “good forestry practices.”

#### **Northern Ontario (Eco-Regions 5E-S, 4E-W-S,3E-W-S, 2E-W,1E, 0E)**

The unique characteristics of Northern Ontario have given rise to distinctive ways of providing services at the local government level. In Northern Ontario, there are cities and towns, as well as one district and one regional municipality. These municipalities are all subject to Ontario’s *Planning Act*, *Municipal Act* and the *Ontario Heritage Act* so the previous comments in this

paper apply. However protection and use of Crown land which covers much of Northern Ontario is the responsibility of the Ministry of Natural Resources (MNR). Crown lands are governed under the *Crown Forest Sustainability Act*, 1994, S.O. 1994 with the purpose to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generations.

A consultative planning process for North and Central Ontario involving the public and First Nations was initiated in 1997 called “Lands for Life”. “Ontario’s Living Legacy Land Use Strategy” was the plan that resulted from that process and it added 378 new parks and conservation reserves to protected areas in the north. Protected areas are always being added to and provincially owned and managed protected areas include:

- Provincial Parks established under the *Provincial Parks and Conservation Reserves Act*, 2006, S.O. 2006;
- Conservation reserves established under the *Public Lands Act*, R.S.O. 1990, Regulation 805/94;
- Wilderness Areas established under the *Wilderness Areas Act*, R.S.O. 1990.

Today there are 316 parks (7.7 million hectares) and 249 conservation reserves (1 million hectares) and 10 wilderness areas (800 ha.) in Ontario. Provincial Parks are protected areas primarily conserving natural heritage features and they make up 88% of Ontario’s protected landscape. Many are actively operated for recreation and commercial uses. Conservation Reserves are different from Provincial Parks in that they are relatively new (since 1994) and are primarily to protect natural heritage features. Commercial logging, mining and hydro development are prohibited in these reserves and they are not formally operated to provide services, facilities and collect fees. Wilderness Areas are “protected areas” but are essentially managed as Crown land as legislation and policy does not offer the same level of protection as parks and conservation reserves. Of the 33 Wilderness Areas in Ontario, 23 are within parks.

Ownership of trees on former Crown land is subject to sections 57 and 58 of the *Public Lands Act*. Even privately owned land may have been sold with the pine trees or all trees still “reserved” in the name of the Crown. In other words as a private land owner in the North, you may not own the trees on your property. A “reservation” may be removed by requesting a “voidance certificate” from MNR as per section 58(1) of the *Public Lands Act*. This certificate is registered at the landowner’s expense on title of the properties, providing confirmation that the reservation is void and that the landowner owns the trees.

#### **YOUR ACTION PLAN:**

- ✓ As a property owner, ensure that you actually own the trees on your land and then see that they are protected through the use of an “easement” registered on title or by having then designated by the municipality under a tree protection by law, or if important enough, under the *Ontario Heritage Act*.
- ✓ Look to “Conservation Reserves” as the vehicle for old growth forest protection.
- ✓ The *Provincial Parks and Conservation Reserves Act*, R.S.O. 2006 continues the “Conservation Reserve” designation. While a Conservation Reserve would normally be identified through some land planning process, now anyone can suggest that a piece of Crown land should be made into a Conservation Reserve and the Ministry of Natural Resources would make that decision. Section 25 even allows individuals to give to the

Minister gifts and bequests of real property for the purpose of making a Conservation Reserve and Provincial Park.

### **The Case for Tree Protection**

Trees benefit us in many ways, but not everyone knows this fact and often it is seen to be more “cost effective” to remove a tree that is in the way rather than accept it as a very important contributor to our quality of life. The case for preserving trees lies in the extensive research already undertaken in documenting the environmental, social and economic benefits of nature.

Some references that will provide a good basis for enlightening others as to the value of tree preservation may be found in:

- ✓ Hudson, Mark. Ground Work: Investigating the Need for Nature in the City (2000) view on line (html) at <http://www.evergreen.ca/en/cg/resources/gw2000/index.html>
- ✓ The Effects of Urban Forests and the Management on Human Health and Environmental Quality <http://www.fs.fed.us/ne/syracuse/studies.htm> where you will find a discussion of the UFORE (Urban Forests Effect) Model and the work of D.J. Nowak
- ✓ APPENDIX F.1\_The Case for Large Trees provides an argument for preserving trees, how to calculate their value and how to “market” this approach and persuade people to take trees into account when making land use decisions.
- ✓ APPENDIX F.2\_Economic Benefits of Heritage Resources: Discussion and Annotated Bibliography broadens the discussion providing resources not just for understanding the value of trees, but also natural areas.

All APPENDICES listed below are available on request from:  
[bh@fernhill.com](mailto:bh@fernhill.com)

### **APPENDIX A – OFFICIAL PLAN POLICIES for PROTECTING “NATURAL HERITAGE”, “TREES” and “HERITAGE TREES” under the PLANNING ACT**

see: Official Plan Policies. Waterloo (request pdf APPENDIX A)

### **APPENDIX B – The MUNICIPAL ACT s. 135 – 141**

See: [http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/01m25\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/01m25_e.htm)

**135. (1)** Subject to subsection (4), a local municipality may prohibit or regulate the destruction or injuring of trees. 2001, c. 25, s. 135 (1).

#### **Woodlands**

**(2)** An upper-tier municipality may prohibit or regulate the destruction or injuring of trees in woodlands designated in the by-law. 2001, c. 25, s. 135 (2).

**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).

**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).

**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).

**Notice**

(6) An upper-tier municipality shall immediately notify its lower-tier municipalities of the passing of a by-law under subsection (2). 2001, c. 25, s. 135 (6).

**Conditions**

(7) A by-law passed under this section may,

- (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).

**Delegation to lower-tier municipality**

(8) An upper-tier municipality may delegate all or part of its power to pass a by-law respecting the destruction or injuring of trees in woodlands to one or more of its lower-tier municipalities with the agreement of the lower-tier municipality or municipalities, as the case may be. 2001, c. 25, s. 135 (8).

**Effect of delegation**

(9) Subsection (4) does not apply to that part of a lower-tier by-law authorized by the delegation of power from the upper-tier municipality. 2001, c. 25, s. 135 (9).

**Delegation to upper-tier municipality**

(10) A lower-tier municipality may delegate all or part of its power to pass a by-law respecting the destruction or injuring of trees to its upper-tier municipality with the agreement of the upper-tier municipality. 2001, c. 25, s. 135 (10).

**Officers**

(11) A municipality may designate persons as officers for the purpose of this section and sections 136 to 140 and may, on such conditions as the municipality considers appropriate, delegate to them the power to issue permits and impose conditions to the permits. 2001, c. 25, s. 135 (11); 2002, c. 17, Sched. A, s. 27 (2).

**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).

### **Appeal**

**136. (1)** An applicant for a permit under a by-law passed under section 135 may appeal to the Ontario Municipal Board,

- (a) if the municipality refuses to issue a permit, within 30 days after the refusal;
- (b) if the municipality fails to make a decision on the application, within 45 days after the application is received by the clerk; or
- (c) if the applicant objects to a condition in the permit, within 30 days after the issuance of the permit. 2001, c. 25, s. 136 (1).

### **Order**

**(2)** The Board may by order,

- (a) uphold the decision of the municipality;
- (b) require the municipality to vary any condition in a permit; or
- (c) require the municipality to issue a permit on such conditions as the Board considers appropriate. 2001, c. 25, s. 136 (2).

### **Decision final**

**(3)** The decision of the Board is final. 2001, c. 25, s. 136 (3).

### **No petition**

**(4)** Section 95 of the *Ontario Municipal Board Act* does not apply to a decision of the Board under this section. 2001, c. 25, s. 136 (4).

### **Power of entry**

**137. (1)** A municipality may, at any reasonable time, enter and inspect any land to determine whether a by-law, order or a condition to a permit under section 135 or 136 or this section or a court order under subsection 138 (2) is being complied with. 2001, c. 25, s. 137 (1); 2002, c. 17, Sched. A, s. 28.

### **Limitation**

**(2)** The power of entry under this section does not allow a municipality to enter any building. 2001, c. 25, s. 137 (2).

### **Order to discontinue activity**

**(3)** If an officer is satisfied that a contravention of a by-law has occurred, the officer may make an order requiring the person who contravened the by-law or who caused or permitted the injuring or destruction of trees in contravention of the by-law to stop the injuring or destruction of trees and the order shall set out,

- (a) the municipal address or the legal description of the land;
- (b) reasonable particulars of the contravention; and
- (c) the period within which there must be compliance with the order. 2001, c. 25, s. 137 (3).

### **Offence**

**138. (1)** A by-law passed under section 135 may provide that any person who contravenes the by-law or an order under subsection 137 (3) is guilty of an offence and is liable,

- (a) on a first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
- (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater. 2001, c. 25, s. 138 (1).

### **Corporations**

**(1.1)** Despite subsection (1), where the person convicted is a corporation,

- (a) the maximum fines in clause (1) (a) are \$50,000 or \$5,000 per tree; and
- (b) the maximum fines in clause (1) (b) are \$100,000 or \$10,000 per tree. 2002, c. 17, Sched. A, s. 29.

### **Replacement**

**(2)** If a person is convicted of an offence for contravening a by-law passed under section 135 or an order under subsection 137 (3), the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to rehabilitate the land or to plant or replant trees in such manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees. 2001, c. 25, s. 138 (2).

### **Agreement re: enforcement by upper-tier**

**139.** An upper-tier municipality may enter into an agreement with any of its lower-tier municipalities for the upper-tier municipality to designate one or more of its officers to enforce by-laws passed by the lower-tier municipality under section 135 and to charge the lower-tier municipality the whole or any part of the costs of the officers. 2001, c. 25, s. 139.

### **Agreement re: enforcement by lower-tier**

**140.** A lower-tier municipality may enter into an agreement with its upper-tier municipality for the lower-tier municipality to designate one or more of its officers to enforce by-laws passed by the upper-tier municipality under section 135 and to charge the upper-tier municipality the whole or any part of the costs of the officers. 2001, c. 25, s. 140.

## **Planting trees adjacent to highways**

141. 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.

## **APPENDIX C – HERITAGE TREES BY-LAWS and TREE BY-LAW RESOURCES**

The Ontario Woodlot Association has a very useful site at <http://www.ontariowoodlot.com/> that dedicates a section to “Forest Conservation Bylaws”.

For another part of Canada see: Table of Tree Protection By-Laws in British Columbia  
[http://www.wcel.org/issues/urban/sbg/Part6/usewisely/Trees\\_Protection.pdf](http://www.wcel.org/issues/urban/sbg/Part6/usewisely/Trees_Protection.pdf)

Other useful sites and potential by-law templates are listed below...

### **C.1 – Examples of Heritage Trees By-Laws**

Gananoque (ON) Heritage Tree Draft By-Law (request pdf APPENDIX C.1)

Barrie (ON) By-Law 2005-120 (request pdf APPENDIX C.3\_Barrie)

Preservation of Heritage Trees and Heritage Shrubs in Santa-Cruz (CA)  
<http://www.ci.santa-cruz.ca.us/pr/parksrec/TreePrograms/treeord.html>

City of Seattle (WA) Heritage Tree Program  
<http://www.ci.seattle.wa.us/transportation/heritagetree.htm>

### **C.2 - Tree By-Laws and Other Information in Locations with Populations Less Than 100,000**

City of Parksville (BC) Tree Protection By-Law  
<http://city.parksville.bc.ca/cms/wpattachments/wpID29atID30.pdf>

The Corporation of the County of Grey (ON) Forest Conservation By-Law  
<http://www.greycounty.ca/council/by-laws/4129-tree.pdf>

County of Middlesex, ON (one of the most comprehensive by-laws to date)  
[http://www.county.middlesex.on.ca/PDFs/Woodlands\\_Bylaw.pdf](http://www.county.middlesex.on.ca/PDFs/Woodlands_Bylaw.pdf)

City of Pickering, ON (request pdf APPENDIX C.2\_Pickering)  
<http://www.cityofpickering.com/standard/cityhall/bylaws/images/TreeProtection.pdf>

Grimsby, ON (request pdf APPENDIX C.2\_Grimsby)

Pelham, ON (request pdf APPENDIX C.2\_Pelham)

Walla Walla, Washington, U.S.A. (request pdf APPENDIX C.2\_Walla Walla)

Whitby, ON (request pdf APPENDIX C.2\_Whitby)

Woodstock, ON (request pdf APPENDIX C.2\_Woodstock)

### **C.3 - Tree By-Laws and Other Information in Locations with Populations Between 100,000 and 500,000**

City of Barrie (ON) Tree By-law:

<http://www.city.barrie.on.ca/docs/By-law2005-120.pdf>

(request pdf APPENDIX C.3\_Barrie)

Hamilton (ON): (request pdf APPENDIX C.3\_Hamilton)

<http://www.myhamilton.ca/NR/rdonlyres/D92235E4-C352-4491-B3F0-033DA03C721F/0/TreeCuttingByLaw2005.pdf>

Kingston (ON): (request pdf APPENDIX C.3\_Kingston)

[http://www.cityofkingston.ca/pdf/bylaws/bl\\_2005-289.pdf](http://www.cityofkingston.ca/pdf/bylaws/bl_2005-289.pdf)

City of London (ON) Tree Conservation By-Law

[http://www.london.ca/Cityhall/CorpServices/CityClerks/bylaws/tree\\_conservation.pdf](http://www.london.ca/Cityhall/CorpServices/CityClerks/bylaws/tree_conservation.pdf)

Nanaimo (BC): (request pdf APPENDIX C.3\_Nanaimo)

<http://www.nanaimo.ca/uploadedfiles/bylaws/4695.pdf>

Regional Municipality of Niagara (ON) Tree Conservation By-Law

[http://www.regional.niagara.on.ca/government/committees/tree-bylaw/pdf/Bylaw\\_s.pdf](http://www.regional.niagara.on.ca/government/committees/tree-bylaw/pdf/Bylaw_s.pdf)

District of Saanich (BC) (request pdf APPENDIX C.3\_Saanich)

<http://saanich.ca/municipal/clerks/bylaws/treepreserve7632.pdf>

Surrey (BC): (request pdf APPENDIX C.3\_Surrey)

See Tree Bylaw Assessment Project: <http://www.capcollege.bc.ca/programs/environmental-reports/shared/assets/tree-bylaw-project26691.pdf>

Corporation of the City of Waterloo (ON)

[http://www.city.waterloo.on.ca/Portals/57ad7180-c5e7-49f5-b282-c6475cdb7ee7/LIBRARY\\_BYLAWS\\_documents/streettreeBylaw.pdf](http://www.city.waterloo.on.ca/Portals/57ad7180-c5e7-49f5-b282-c6475cdb7ee7/LIBRARY_BYLAWS_documents/streettreeBylaw.pdf)

City of Oakville (ON): [http://www.oakville.ca/Media\\_Files/by-laws/TreeDestructionPrivateProperty2000-095.pdf](http://www.oakville.ca/Media_Files/by-laws/TreeDestructionPrivateProperty2000-095.pdf)

### **C.4 - Tree By-Laws and Other Information in Locations with Populations Greater Than 500,000**

California Report to Board of Forestry on Heritage Tree Petition

[http://www.bof.fire.ca.gov/pdfs/action%20Plan%203\\_21\\_05%201%20final%20to%20BOF.pdf](http://www.bof.fire.ca.gov/pdfs/action%20Plan%203_21_05%201%20final%20to%20BOF.pdf)

Mississauga (ON): (request pdf Appendix C.4\_Mississauga)

City of Toronto (ON) Private Tree By-law

(request pdf APPENDIX C.4\_Toronto.Private Tree By-law)

[http://www.toronto.ca/legdocs/municode/1184\\_813.pdf](http://www.toronto.ca/legdocs/municode/1184_813.pdf)

City of Vancouver (BC): (request pdf APPENDIX C.4\_Vancouver)  
<http://www.vancouver.ca/blaws/78876v3.pdf>

**APPENDIX D – Designation under the *Ontario Heritage Act* - A Case Study: the Falcon Inn Black Walnuts**

Falcon Inn Intention to Designate - CRB Decision  
[http://www.culture.gov.on.ca/english/culdiv/heritage/crb/scarborough\\_falcon-inn.pdf](http://www.culture.gov.on.ca/english/culdiv/heritage/crb/scarborough_falcon-inn.pdf)  
(request pdf APPENDIX D\_Falcon Inn)

“MAPLE LEAF FOREVER” By-law designating Maple Tree located at Muir’s MAPLE COTTAGE (request pdf APPENDIX D\_MAPLE COTTAGE)

**APPENDIX E – An Example of a Heritage Tree Easement**

Rock Tree , Surrey B.C.  
(request pdf APPENDIX E\_Rocktree Easement.Surrey.pdf)

**APPENDIX F - The Value of Trees**

request pdf APPENDIX F.1\_The Case for Large Trees vrs Small Trees (Urban Forest Research Fall 2003) provides an argument for preserving trees, how to calculate their value and how to “market” this approach and persuade people to take trees into account when making land use decisions.

request pdf APPENDIX F.2\_Economic Benefits of Natural Heritage Resources: Discussion and Annotated Bibliography broadens the discussion providing resources not just for understanding the value of trees, but also natural areas.

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