

Tree By-law Information Package

January 7, 2011

This document has been prepared by the Forest Conservation By-law Committee and the Lower Tier Advisory Group. These are groups of municipal and provincial staff and other interested agency staff that meet informally to:

- provide support to municipal staff by providing a forum for discussion, information exchange, and input into Tree By-law issues and initiatives;
- encourage training opportunities, and improve competency in Tree By-law officers; and
- encourage more effective and consistent application of Tree By-laws across Ontario.



Photo by D. Krahn

DISCLAIMER

This information is provided with the intention to provide general information about Tree By-laws and to assist in the development and upgrading of Tree By-laws under the *Municipal Act*. It is not legally verified information. The information is for discussion purposes only. Neither the Committee, the Advisory Group, the Ministry of Natural Resources, nor the members participating on the Committee or Advisory Group provide any representation, warranty or guarantee of any kind as to the suitability, accuracy or validity, legal or otherwise, of the document, the information contained therein or the use of either. Any Tree By-laws or action based on the use of this document should be undertaken only after consultation with legal counsel.

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1. Purpose of this Information

The purpose of this information is to assist those involved in developing municipal Tree By-laws in Ontario and to provide some general background information about Tree By-laws. This information is intended to help develop a well written, practical and enforceable by-law. It should be used in conjunction with Tree By-law templates and with the help of others experienced in developing tree by-laws such as the Forest Conservation By-law Officers Committee, the forest staff at the local Ministry of Natural Resources District Office and municipal legal expertise.

2. When Considering a Tree By-law

2.1. The History and Legislation behind Tree By-laws

In 1946, the *Trees Conservation Act* was passed in an attempt to protect woodlands from clearing and overcutting. This legislation was in response to concerns by some counties over the clear cutting of forests on sub-marginal lands. Wellington County was the first county to pass a by-law to control cutting in 1946.

Counties, regional municipalities and a few specific townships in southern Ontario passed Tree By-laws through the *Trees Conservation Act* in 1946, then the *Trees Act* in 1950, and finally the *Forestry Act* (1998 amendments). Under the *Municipal Act* in 1994, all local municipalities with a population of greater than 10,000 could regulate tree cutting. Due to the population limit, by-law provisions were not accessible to all municipalities.

To simplify the process and authority for Tree By-Laws, provisions were consolidated into the new *Municipal Act* (2001) which took effect on January 1, 2003. Upper tier, single tier and lower tier municipalities could now all pass Tree By-laws under the new *Municipal Act, 2001*. Bill 177, the *Municipal Act Statute Law Amendment Act, 2002* includes provisions to repeal the Tree By-law provisions under the *Forestry Act*. However, Tree By-laws currently in force, written under the *Forestry Act* do remain valid until repealed.

Consolidation of the tree cutting provisions into the new *Municipal Act, 2001* enabled:

- All local municipalities and upper/single tier municipalities to pass and enforce by-laws. They may also delegate these powers up or down.
- Upper tier municipalities can regulate or prohibit the cutting of trees in *woodlands* designated in the by-law that are 1 ha or greater.
- Lower tier municipalities can regulate or prohibit the cutting of individual trees in areas up to 1 ha in size.
- Definitions of both “good forestry practices” and “woodlands” remain the same and are referenced back to the *Forestry Act*.

There are several differences between the old provisions in the *Forestry Act* and the provisions in the new *Municipal Act, 2001*. These include:

- The *Municipal Act* enables municipalities to ‘prohibit’ the destruction or injuring of trees where the *Forestry Act* could only ‘regulate’ the destruction or injuring of trees.
- The Minister of Natural Resources does not approve by-laws under the *Municipal Act, 2001*. (Note that MNR staff are still available to provide advice in the development of Tree By-laws.)
- By-laws enacted under the *Municipal Act, 2001* can require a permit for the destruction or injuring of trees.
- The permit may impose conditions including how trees are cut and qualifications of persons authorized to cut.

- By-law officers can order cutting to stop.
- Several exemptions previously legislated in the *Forestry Act* such as “cutting for own use” have been removed, enabling the municipality to include whatever exemptions are most appropriate for their circumstances.

The changes that came with the *Municipal Act* have empowered municipalities more than ever before. In the past 10 years almost all upper tier Tree By-laws have been updated incorporating some new considerations for good forestry practices and requiring applications for permits instead of just notices of intent. Most upper tier municipal tree by-laws have also changed their by-law names to Forest Conservation By-laws.

An unofficial excerpt from the *Municipal Act* has been placed in the Appendix for reference.

The Act states that

“A local municipality may prohibit or regulate the destruction or injuring of trees.”
and

“An upper tier municipality may prohibit or regulate the destruction or injuring of trees in woodlands...”

Note that *Woodlands* has a specific definition within the Act.

“Woodlands means woodlands as defined in the Forestry Act that are one hectare or more in area.”

Therefore, upper tier municipalities only have jurisdiction over woodlands 1 ha or larger and lower tier municipalities have jurisdiction over trees and treed areas less than 1 ha in size.

The Act also states that

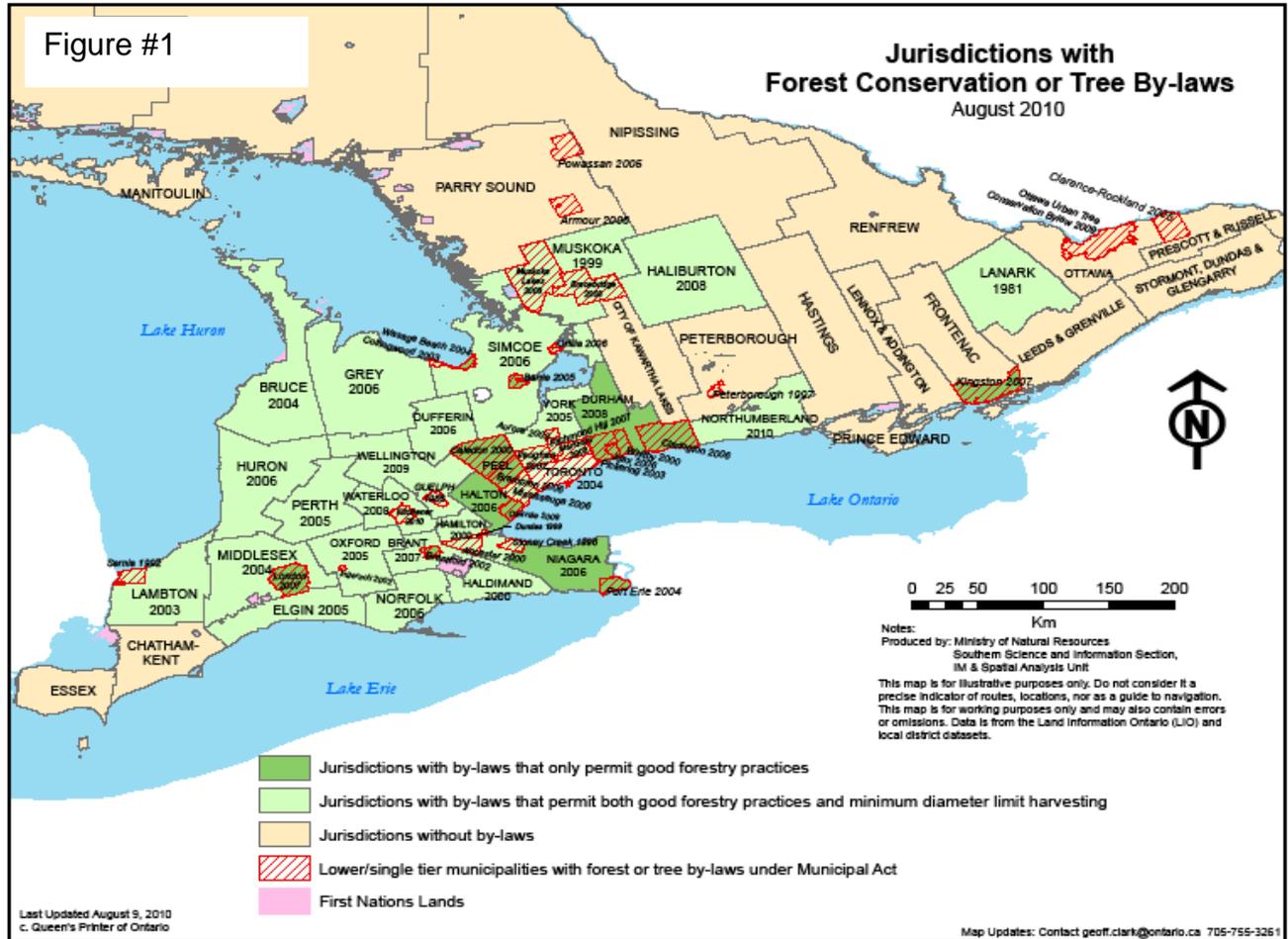
“...a municipality shall have regard to good forestry practices...”
and

“...a municipality may... require a permit ...impose conditions to a permit...including... the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees.”

Also important to note is that delegation can occur up from the lower tier municipality to the upper tier municipality and also down from the upper tier municipality to the lower tier municipality. Single tier municipalities have jurisdiction over both trees and woodlands.

2.2. Current Status of Tree By-laws Across Ontario

Currently, we are aware of 23 upper tier municipalities (counties, regional governments) with by-laws and 35 lower and single tier municipalities (usually cities or towns) with Tree By-laws in Ontario. Figure #1 shows a map of these municipalities.



2.3. Tree By-laws Across Northern Ontario

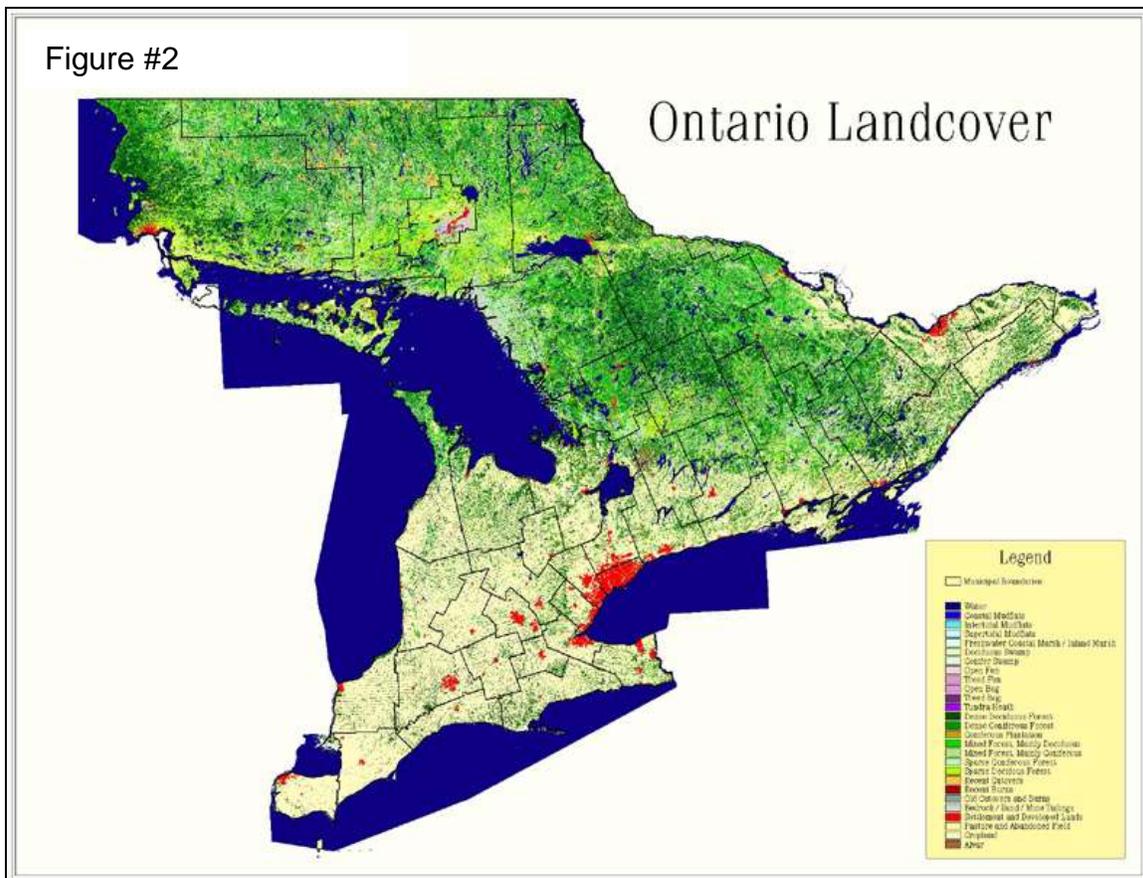
Although there is a growing interest in Tree By-laws across northern Ontario. The most northerly *Municipal Act* by-laws that we are currently aware of are in Armour and Powassan townships. Northern jurisdictions interested in tree protection must keep in mind that the templates currently developed in association with this document are based on southern Ontario needs but that the legislation enabling Tree By-laws is quite flexible and can likely accommodate the needs of northern interests. For instance, northern jurisdictions may wish to consider the practice (now abandoned in southern Ontario) of asking for a “Notice of Intent to cut”, rather than the more costly administrative Permit process. Or with the growing interest in biofuel, municipal jurisdictions may wish to protect their forest landscape by requiring reforestation efforts after a clear cut on private land.

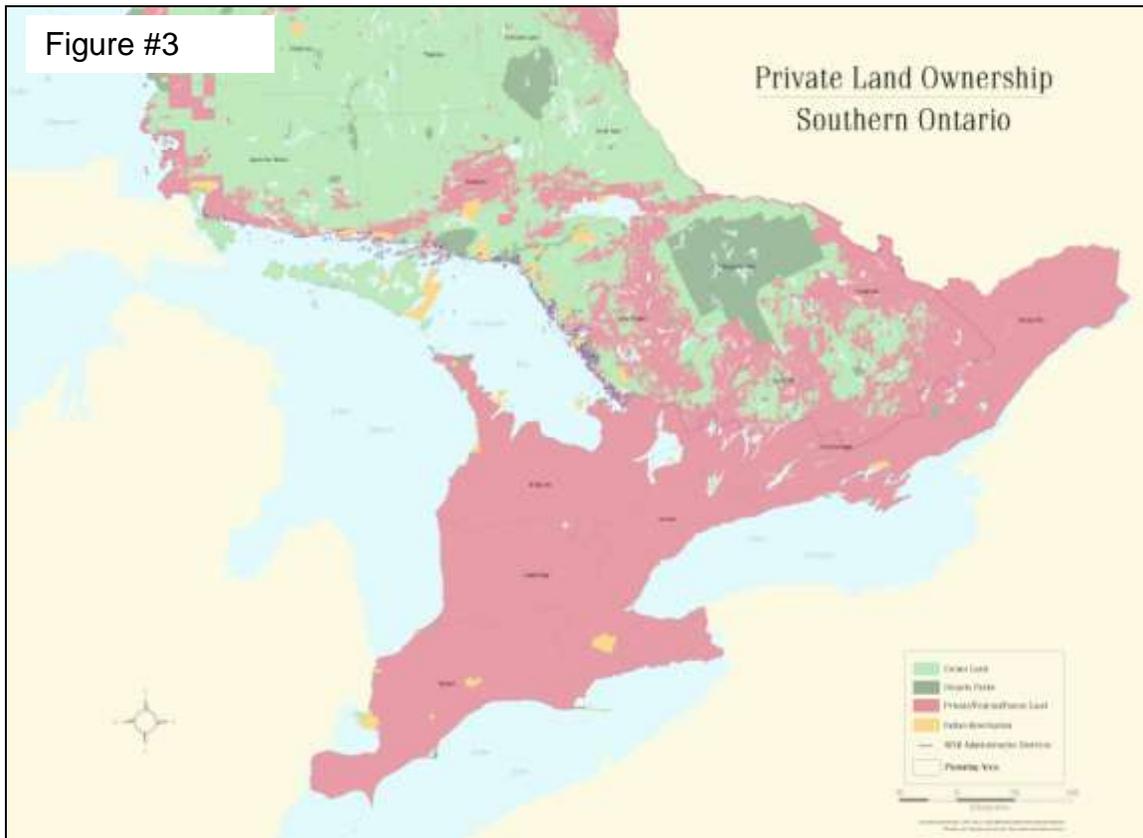
A unique approach launched by Shuniah Township using the *Planning Act* has been very successful. Shuniah became concerned about the increasing trend in harvesting on private lands in proximity to sensitive land uses such as lakes and rivers and residential areas as their rural population continues to grow. In response, Shuniah enacted an Interim Control By-law under the *Planning Act* in 2006 to provide immediate protection from harvesting within certain buffer areas while they conducted studies, appointed an Ad Hoc Committee to review the findings and make recommendations before making a final decision about their approach. In 2007 the interim by-law

was replaced with the permanent Control By-law restricting commercial timber harvesting within 20 metres from Municipal roads, 50 metres between the rural zones and other zones (with some exceptions) and 150 metres from certain lakes. They have found this approach very successful and have tested this mechanism twice successfully in court.

2.4. Public Interest in a Private Resource

There are over 6.8 million hectares of private forests in Ontario. Figure #2 shows the distribution of forested land across southern Ontario. Most of these forests are owned in smaller parcels by individuals who have limited knowledge and ability in the area of forest management. Figure #3 shows the distribution of private land ownership across southern Ontario. Privately owned forests provide many benefits to more than just their owners. Besides contributing to the local economy through forest products such as lumber, fuel wood and maple syrup, these forests provide clean air and water, habitat for a wide range of wildlife species and the backdrop for many recreational activities. Forests within a community increase the quality of life, create attractive communities and improve public image, making the community a desirable place to live. Our forests contribute to human health and our quality of life in general. The protection of biodiversity is becoming a matter of increasing importance as climate change and the rising influx of invasive species threatens the ecological sustainability of our environment. The general public is the beneficiary of these “forest services” and therefore has a stake in the protection and good management of private forests.





2.5. Tools Available to Municipalities

Municipalities are encouraged to develop a comprehensive strategic approach toward the protection of woodlands and urban forests. Strategic directions could include:

- The development of Official plan policies under the *Planning Act* that are consistent with MNR's *Natural Heritage Reference Manual for Natural Heritage Policies of the Provincial Policy Statement, 2005*. These provide a Policy Framework at both the Regional and Local level to support a linked natural heritage system. These natural heritage systems need to be designated and illustrated on the accompanying Official Plan Land Use Schedules;
- The development under the *Planning Act* being consistent with Official Plan policies Zoning that designates for the protection of environmentally sensitive areas, natural heritage systems, locally and regionally significant woodlands, open space, hazard lands and other protection areas;
- The development under the *Municipal Act* of a Forest Conservation By-law and or a Tree Protection By-law;
- A Forest Management Plan for municipally owned forests;
- A Comprehensive tree planting and streetscape program;
- A Greenlands property acquisition strategy;
- Education and marketing of the human health benefits and other services the forest provides to its municipal citizens; and
- Partnerships.

For example: York Region, by adopting the Greening Strategy in 2001, has committed to taking a proactive and comprehensive approach to conserve forests as part of a healthy natural heritage system for future generations. The emphasis of the strategy is to achieve on-the-ground results but includes valuable planning and education as well. An annual allocation of \$1.35M is directed

to the protection of conservation lands primarily through tree planting and other naturalization projects on private and public lands, environmental education, developing innovative environmental partnerships and the acquisition of strategic conservation lands (through donation to fee simple purchase).

2.5.1. Tools under the Planning Act

One of the most important tools that municipalities have in protecting forests is their Official Municipal Plan and the implementing Zoning By-law enacted under the *Planning Act*. The purpose of the *Planning Act* as stated in Section 1.1 is to:

a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;

(b) to provide for a land use planning system led by provincial policy;

The first “provincial interest” defined in the *Planning Act* is:

Section 2 (a) the protection of ecological systems, including natural areas, features and functions;

Under Part 1, Section 3 of the *Planning Act*, the government has issued the Provincial Policy Statement (PPS) which provides policy direction on matters of provincial interest related to land use planning and development. Section 3 of the *Planning Act* requires that planning authorities “shall be consistent with” the PPS in their deliberations and decisions. In 2005, a new PPS was issued and Section 2.1 of the PPS addresses the protection of natural heritage which includes natural heritage features, areas, systems and this specifically includes “significant woodlands”. This planning tool requires municipalities to protect the ecological function and biodiversity of natural heritage systems, and to designate significant woodlands that are critical in maintaining the integrity of those systems and ultimately the quality of life for their citizens. There is also the requirement under Section 2.6 of the PPS to conserve “significant cultural heritage landscapes.” As many cultural heritage landscapes include trees associated with built heritage, these areas must be identified, listed and designated in the Official Plan as part of the planning process. Designation under the *Ontario Heritage Act* is only one way of protecting these important community resources.

Note that there are as well Acts and accompanying provincial plans that affect specific areas of the Province, such as the Oak Ridges Moraine, Niagara Escarpment, and the Greenbelt - Greater Golden Horseshoe. Any policies within these plans related to natural heritage must also be reflected in a municipality’s official plan.

2.5.2. Tools Under the Municipal Act

Forest Conservation By-laws and Tree Protection By-laws enacted under the *Municipal Act* are just one of the many tools that municipalities can use to protect their natural landscape and urban forests. Other tools range from completely voluntary mechanisms, such as education and awareness programs, through to regulatory mechanisms such as municipal planning and by-law controls.

2.5.3. Educational and Persuasive Tools

A municipality’s first priority should be to promote forest and tree protection and discourage forest destruction and tree removal through proactive education and voluntary mechanisms.

The Ontario Stewardship program has established a network of county-based stewardship councils that are comprised of individuals who share a common concern about the sustainability of our environment and resources. Most councils offer workshops and training sessions that encourage landowners to become more knowledgeable about forest and wildlife management. Municipalities can encourage good stewardship through these

councils and through their local Conservation Authorities by either participating directly in their activities, or by providing general support. Other creative opportunities could be considered such as additional targeted landowner education or even local targeted tax incentives for valued forested areas.

Municipalities often work closely with Conservation Authorities as well. Each Conservation Authority is unique in its priorities, areas of emphasis and resources. Areas where the municipalities can work in partnership with a Conservation Authority to protect natural heritage should be explored.

In contrast to voluntary stewardship mechanisms, Forest Conservation By-laws or Tree Protection By-laws are an additional tool that can be successfully used as an educational tool, but when necessary as a punitive tool used once damage to a forest environment or tree removal has already occurred. Up front proactive approaches such as education on the value of forest protection should be the first priority in a municipality's effort to protect forests. A survey done by Environics in 2000 of rural landowners found that less than half believed that there should be regulations controlling the harvest of trees on private land, but 82% agreed that land management professionals such as foresters and loggers should be certified or licensed. Experience has also shown the negative impacts on the forests within municipalities that don't have by-laws and especially where adjacent municipalities have well enforced by-laws.

Enactment of a Forest Conservation By-law or a Tree Protection By-law should be supported with a strong commitment to efficient administration, with committed and trained by-law enforcement officers, and with strict and proven enforcement resulting in appropriate deterrents.

To be effective, municipalities should also be committed to education of landowners, developers, and the general public. It is only through the promotion and public understanding of the importance and value of forests to a healthy environment and improved quality of life that regulatory tools become effective.

2.6. The Green Energy Act and Tree By-laws

Renewable Energy projects such as solar and wind installations, are subject to the municipal Tree By-laws in the area, enacted under the *Municipal Act*. This provides the municipality protection from prospective renewable energy developers that may consider removing the forest cover prior to submitting renewable energy permit applications.

The *Green Energy Act* provided for the amendment of several pieces of legislation, including the *Planning Act*. Renewable Energy projects are no longer subject to the *Planning Act*. The Renewable Energy Approval (REA) process is administered by the Ministry of Environment (MOE), under the *Environmental Protection Act*. Applicants must complete and submit a natural heritage assessment as part of their REA submission to MOE. MNR plays a role in reviewing and confirming natural heritage assessments to ensure that features, including woodlands, have been identified and any impacts adequately addressed. Municipal consultation is a required component of the REA process.

Questions regarding the applicability of municipal Tree By-laws can be directed to the Renewable Energy Facilitation Office (REFO) REFO@ontario.ca, 1-877-440-REFO (7336)

2.7. The Goal of a Tree By-law

An important step before looking at how to word a by-law is to carefully analyze the municipal forest cover and the municipality's tree protection issues. Consider how the municipality, city or town residents and its environment would benefit from a by-law. Ensure that there is a suite of mechanisms and tools in place or being considered to protect forests and individual trees. Having a clear vision of what the purpose of the by-law is will not only assist in the development of the by-law, but will also assist in its public understanding, acceptance and support. It will influence its effectiveness, enforcement and possibly success during prosecution.

Some goals may include:

- Achieving a stable or increasing forest landbase;
- Long term protection of quality forests on the municipal landscape;
- Maintaining healthy forest ecosystem to contribute to the quality of life;
- Support of a viable forest industry;
- Protection of forest cover in support of and consistent with municipal planning objectives;
- Consistent fairness for all loggers to engage in good forest management practices in a particular municipality;
- Optimizing the benefits derived from the urban forest;
- Increasing community awareness of the values of trees and their associations;
- Protecting natural heritage features and areas;
- Preserving and enhancing the aesthetic value of woodlands and trees;
- Providing recreational opportunities;
- Maintaining and enhancing water quality;
- Preventing soil erosion and water run-off;
- Providing habitat for wildlife;
- Reducing the effects of climate change;
- Achieving the objectives of an Official Plan by sustaining a healthy natural environment;
- Contributing to human health and the quality of life of local communities through the maintenance of woodland cover and ecological sustainability that is necessary to maintain the ecological goods and services that the community enjoys and needs to be healthy and sustainable;
- Protecting wildlife habitat (including species at risk habitat) and promoting biological diversity, and ecological resilience to climate change and invasive species; and
- Conserving and improving the health and quality of forests through Good Forestry Practices and increasing the value of the local forest economy in the long term.

Tree By-laws are one of many tools to help protect forests from being removed from the landscape and to maintain or improve their quality. Some forest values that require protection include the maintenance of forest cover on the land base, the quality and health of the trees themselves, and ensuring the continued flow of forest products and services. Progressive Tree By-laws protect the integrity of forests by requiring good forestry practices. Historically, Tree By-laws were based only on a diameter limit cut, but forest science has shown that this method of regulating harvest will, in most cases, result in declining forest values. Often the value of forests to our human environment has been underestimated when compared with competing land uses. For instance, well managed, healthy forests provide many benefits, including clean air and clean water, which can be linked directly back to healthy individuals and communities.

More Tree By-laws are being enacted in cities and towns due to the increasing awareness of the value of the urban forest. Many of the trees historically found in our urban environments have been disappearing under the extreme stresses of increasing urban pressure and development.

The maintenance of mature tree cover is recognized as contributing to human health and quality of life. Trees offer both a visual and physical respite from the built urban environment, contribute to numerous environmental goals, and have been known to increase property values. Trees reduce sun exposure and the heat island effect, save energy, remove air pollutants, attenuate flooding, reduce rates of asthma, lower blood pressure, encourage physical activity, improve mental and social health, and increase property value by up to 30%.

The goals of the Tree By-laws should be clearly communicated to the public. All Tree By-laws should be accompanied by public education programs that raise awareness of both the purpose of the by-law and the importance of tree health and proper tree maintenance and removal.

Tree By-laws also have a goal to protect landowners in rural areas from being taken advantage of by loggers that are more interested in short term profit rather than long term economic and ecological sustainability. The majority of landowners don't want to do anything to harm their forest. They may only harvest 2-3 times in their lifetime, putting them at a disadvantage when negotiating the harvest of their forest.

Tree By-laws result in putting all loggers on the same playing field and sustaining the local forest economy. That is, it puts all loggers on the same standard so no one can take advantage of landowners and make more profit than the others with unsustainable practices. Tree By-laws will discourage loggers from outside the area without a local interest and the indiscriminate removal of forest cover. Local loggers have a long local history in the community and an invested interest in their local forests managed sustainably for future harvesting. A Tree By-law that encourages good forestry practices supports the long term sustainability of the local forest economy while still enabling them to make a living on logging.

The decision for a Tree By-law needs to be a municipal decision, similar to other land-use planning decisions. For instance, education may not convince a landowner with an offer from a developer of a solar farm or residential development or the potential of a new cash crop to retain the forest for its long term value of growing trees.

2.8. Tree By-law Terminology

The *Municipal Act* refers to the term "Tree By-laws" but several variations of this are being used. The traditional term has been "Tree Cutting By-laws". However upper tier municipalities that have a long history with Tree By-Laws are often naming them "Forest Conservation By-laws" now. This intentional change in terminology reflects their interest in conserving the forest as opposed to restricting tree cutting. In the past these upper tier municipal by-laws have provided diameter limits where trees could not be cut below those sizes. Now most Forest Conservation By-laws allow a choice to harvest either according to a circumference limit or according to Good Forestry Practices. Some By-laws provide an incentive to conduct Good Forestry Practices with reduced permit application fees. There are a growing number of upper tier municipalities that are enacting Forest Conservation By-laws allowing for only Good Forestry Practices.

Lower tier municipalities use the terms "Tree Protection By-law", "Private Tree By-law", or just "Tree By-law". These by-laws protect either individual trees, or small wooded areas, or both. Often in urban environments, a by-law is used to prevent trees from being removed from a property prior to development approvals being issued. Some by-laws require a report from a certified arborist, which can include an inventory of trees on a subject property as well as a tree preservation and protection plan for trees that are to be retained.

Lower tier municipalities may also enact a separate public Tree By-law that regulates or protects trees only on public lands such as parks and road right-of-ways. Some municipalities are also enacting Heritage Tree By-laws that identify and protect local trees of significant heritage value.

3. Developing a Tree By-law

3.1. Process to Prepare and Approve Tree By-laws

Once a municipality is ready to prepare a draft Tree By-law, it should consider all the tools and support available as described in Section 6. For instance, Tree By-law templates have been developed by the Forest Conservation By-law Committee and an interim group of lower tier municipal staff to assist with the preparation or the updating of a Tree By-law. It is also suggested that the draft by-law be reviewed with the local MNR District Forester and/or by someone with experience drafting Forest Conservation By-laws. The District Forester should consult with the Forest Conservation By-law Committee, and with MNR's Regional and Main office staff to ensure the most recent concepts and best wording are considered.

Note that some municipalities may wish to conduct public consultation prior to developing a draft Tree By-law, however is not a requirement and should be carefully considered. Section 5.3 provides some thoughts on this.

Under the *Municipal Act*, the municipality may pass the by-law without the approval of the Minister of Natural Resources as was required with by-laws under the *Forestry Act* in the past.

3.2. Developing Forest Conservation By-laws (woodlands >1ha in size)

3.2.1. Benefits of Promoting "Good Forestry Practices"

'Good forestry practices' is defined in the *Forestry Act* as:

"the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape."

Besides the above stated environmental benefits, there are also financial benefits to good forestry practices. There is tremendous opportunity to grow our forest economy on private lands if good forestry practices are used. In Southern Ontario, good quality trees usually reach their period of greatest growth at a diameter of approximately 16 inches (40 cm). In other words, trees increase in value more rapidly as they attain these larger diameters and heights. Long-term financial returns are therefore greater if high quality trees are considerably larger when harvested. However, the quality of a forest will also affect the financial return. Forest quality will vary depending on the site conditions (soils, drainage, geographic location), and the past management practices. Financial returns are dependent on all of these factors.

Municipalities are encouraged to incorporate the Ministry of Natural Resources' "A *Silvicultural Guide to Managing Southern Ontario Forests*" (OMNR, 2000) or its updates into their by-law as a benchmark for good forestry practices. This guide further defines "good forestry practices", and also describes "bad practices". Bad practices include high-grade harvesting (removing mainly the most valuable or largest trees), reducing structural

diversity, excessive damage to the remaining trees and allowing forests to be grazed by livestock.

3.2.2. The Science of “Good Forestry Practices”

Most existing Forest Conservation By-laws provide an option to either cut above certain diameter limits or to cut according to good forestry practices. The diameter limit approach had traditionally been used with the thought that smaller diameter trees were actually younger trees, and that a diameter limit would protect the future forest. While this method did protect the forest from complete devastation, it has numerous long-term negative effects because smaller trees may in fact just be slow growing or genetically inferior trees. It is now known that cutting to a diameter limit tends to result in reduced genetic diversity, lower stand productivity, and narrow species composition and stand structure. This results in lower timber quality because the best growing and best formed trees are the ones removed in each harvest, leaving successively poorer growing and poorer quality trees as the next crop and as parent trees for natural regeneration. Such stands also may have an impaired ability to buffer environmental change.

New science and forest growth information is now available that can provide the rationale necessary for municipalities to update their by-laws. The “*Silvicultural Guide to Managing Southern Ontario Forests*” (OMNR 2000) provides information such as growth charts and recommended minimum density for forests (commonly described as basal area). Consideration can be given to promoting a desirable stand structure instead of simply protecting smaller diameter trees. Good forest management practices can be further developed to include proper forest planning, prescription development, and recognizing the importance of protecting the forest environment. By-laws can also include provisions to protect the remaining trees from damage during harvest operations.

3.2.3. Use of Forestry Consultants

Local forestry consultants can also play a key role in the success of a by-law. Not only can they assist in the development of the by-law, but some municipalities hire forest consultants on retainer as their Forest Conservation By-law Enforcement Officer. Some forest consultants have excellent credentials and can be an asset when used as expert witnesses during prosecution of by-law infractions.

Consultants are often hired by municipalities for the general forestry needs of the municipality, such as data collection and analysis, as well as to provide required education/advice for landowners. They are also often hired to carry out forest management in municipally owned forests (often referred to as community forests).

When hiring a forest consultant, use the same criteria you would use to hire a municipal staff by-law officer. In most cases they should have the credentials of either being a Registered Professional Forester (R.P.F.), a forester with a Bachelor of Science in Forestry, or a qualified forest technician with experience.

3.2.4. Use of Certified Tree Markers

Tree marking is the selecting and marking of trees to be harvested and trees to be left to grow. Selected trees are usually identified with coloured paint on the tree trunk at DBH (diameter at breast height commonly measured 1.37 metres from the ground) and at the stump. Normal colours used in Ontario are orange or yellow for trees to be removed and blue for trees to be left uncut.

Some Tree By-laws recommend that certified tree markers mark the trees to be removed before harvesting is done. A certified tree marker is a person who has successfully completed the Tree Marking Training Program offered by the Ontario Ministry of Natural Resources and completed the subsequent field audit. Certified tree markers are a requirement for marking trees on Crown lands. The tree marking course is designed to teach marking on Crown land and therefore concentrates on the marking of forests located in the central part of Ontario. Many of the marking concepts and philosophies can be applied to southern Ontario (Ecoregions 6E and 7E), but it should be recognized that there are many other strategies for marking southern Ontario forests that will not be learned at this course. A southern Ontario version of the tree marking course is now offered to deal with more southern issues. The tree marking training courses are designed to implement the recommendations of the provincial Silvicultural Guides. "The Silvicultural Guide to Managing Southern Ontario Forests" should be carefully reviewed by anyone marking in southern Ontario.

Tree By-law Enforcement Officers should also be trained in tree marking if they are to competently and effectively enforce a Tree By-law. Detailed course information about becoming a certified tree marker is given below within the section titled "Competency of Tree By-law Officers".

3.2.5. Managed Forest Tax Incentive Program (MFTIP)

The MFTIP is a provincially administered program whereby the municipality provides property owners with a reduction in property taxes if they manage their forest according to a plan that is approved by a MFTIP approver.

Municipalities are cautioned not to provide a blanket Tree By-law exception for properties under the MFTIP. Although the majority of participants under the MFTIP develop a comprehensive forest management plan and are required to conduct forest management according to good forestry practices, this does not guarantee that good forest management or good harvesting practices will be conducted. Properties under the MFTIP should be subject to the by-law as are all other properties.

The purpose of the MFTIP is to provide a tax incentive for forest owners that prepare and adhere to an approved forest management plan. However, most management plans do not specify the details of how tree marking or harvesting will occur. Many forest owners are still unaware of good forest management practices when it comes to harvesting. They may be easily convinced by a logger offering cash that good forest management practices will be conducted. Bad forest management practices are explained in more detail on pages 14-15 of "A Silvicultural Guide to Managing Southern Ontario Forests".

Municipal staff that become aware of a property under the MFTIP conducting questionable practices are encouraged to contact the MFTIP program administrators to conduct an audit.

3.2.6. Conservation Land Tax Incentive Program (CLTIP)

The CLTIP is a provincially administered program whereby the municipality provides landowners with a property tax exemption only on the portion of high conservation lands that have been identified by the province. Landowners are contacted by the province if they are eligible and they may apply on a voluntary basis. Participation in the program requires the landowner to commit to protecting the natural heritage values for which the property was identified.

For the benefit of the landowner enrolled in the CLTIP, the municipality may consider adding a note to the application and permit that if the property is enrolled in the Conservation Land Tax Incentive Program (CLTIP) they should contact the Ministry of Natural Resources CLTIP program administrator prior to engaging in harvest activities since there may be some activities that may restrict their future eligibility in the program.

3.2.7. Exemptions

The *Municipal Act* lists a number of standard exemptions to Tree By-laws. The Act also allows municipalities to include additional exemptions in their by-law and to provide for a process to authorize exemptions. If an application is made to the municipality for an exemption, the council or staff may approve the application with or without conditions, deny or defer the request. It is suggested that municipalities develop policies that will guide them when considering an application for an exemption that ensures that the intent of the by-law is not compromised. Municipalities are cautioned regarding this provision, as misuse of it may prove to make its Tree By-law ineffective. Caution should be exercised that the proponent is not simply trying to circumvent the intent of the by-law by implementing some other form of land use.

A well written, clear and concise by-law is essential. There have been instances in the past where attempted prosecutions have been disallowed due to poor wording of the by-law.

3.2.8. The Forest Conservation By-law Committee

The Forest Conservation By-law Committee is an independent group of municipal and provincial staff as well as other interested agencies that meet informally to:

- Provide support to municipalities by providing a forum for discussion, information exchange, and input into forest conservation by-law related initiatives.
- Encourage training opportunities, and improve competency in forest conservation by-law officers.
- Encourage more effective and consistent application of forest conservation by-laws in Ontario.

This Committee also hosts an annual meeting for all forest conservation by-law officers in Ontario to exchange information relative to forest conservation by-laws. The Annual Forest Conservation By-law Meeting is open to any municipal staff interested in Tree By-laws. If you are interested in becoming involved in this committee, please contact Doris Krahn with the Ministry of Natural Resources at 705-755-3215 or doris.krahn@ontario.ca

Over the past 10 years, significant progress has been made through the Forest Conservation By-law Committee in providing support to improving consistency and successful prosecutions of Tree By-laws with by-law template development, information exchange and annual meetings. As such, municipalities have improved the success of enforcing Tree By-laws over the past 10 years with ticketable fines and successful prosecutions.

3.3. Developing Tree Protection By-laws (trees and woodlands < 1ha in size)

There is a growing interest in enacting Tree By-laws in lower tier municipalities such as cities and towns as well as in some northern Ontario communities.

3.3.1. Developing a City's Tree Protection By-law

A municipality considering the passage of a Tree By-law with its accompanying policies and procedures should clearly state the reasons for reviewing its need. The general public, arboricultural, tree care companies and environmental interest groups in the municipality could be advised of the upcoming review in order that they can formulate their questions and/or concerns. This can be done by way of an introductory staff report to Committee and Council requesting authority to investigate a Tree By-law under the *Municipal Act, 2001*, followed by a press release. However, there is no requirement to do public consultation. Further considerations regarding public consultation are discussed in section 5.3.

For example, any recent incidents of clear cutting of trees in the urban area of a municipality, in advance of *Planning Act, 1990* approvals, may see a strong desire by the public to have Council consider the passage of a Tree By-law, as well as an accompanying Site Alteration By-law, to regulate tree cutting in the municipality. Another concern is the "monster home" phenomenon seen in older areas of municipalities where small bungalows are replaced with much larger two storey homes, all permitted in the zoning by-laws, but at the expense of tree coverage. Further, in waterfront development, the desire to retain vegetative cover, including trees, at the water's edge is well known to protect fish habitat and the health of the waterways at hand. There are many other examples.

In two-tier municipalities, it is imperative that the upper and lower tier municipalities work co-operatively to ensure the lower tier Tree By-law and the upper tier Forest Conservation By-law complement each other. Consider working together so that they are drafted to work in harmony with each other. Other lower tier municipalities within the upper-tier's jurisdiction may also have or are considering Tree By-laws and must also work in harmony with the upper tier municipality.

It is helpful to conduct an analysis of best-practices in Tree By-laws by other municipalities in Ontario. The purpose of such an analysis would help to determine the upper and lower tier responsibilities, often varying from municipality to municipality; the use of permitting systems; citation of the ten statutory provincial exemptions as found in the *Municipal Act, 2001* as well as an analysis of additional tree cutting permit exemptions specific to the municipality drafting the Tree By-law; and a fees analysis. A draft Tree By-law can then be presented to Committee and Council with the expressed permission to consult with the public.

Focus group sessions can then be held with arboricultural experts, tree care companies, interested members of the public and involved municipalities, both upper and lower tier, in order to understand the concerns of both the public and the tree care companies, all the while working with the upper-tier municipality to avoid any under or overlap of jurisdiction, policies, etc. Upon gathering such information and reviewing other municipal examples of good Tree By-laws, a draft Tree By-law can be presented to Committee and Council for information and specific direction for staff to proceed to open, advertised public meetings to receive input on the Tree By-law with the expressed desire to meet the varied wants and needs of the community. The draft Tree By-law can also be advertised in the newspaper advising that public meetings, after the focus groups, were forthcoming and the document was available for review and comment, both on-line and at the municipal administrative offices.

At least one, if not two, public meetings should be held and the culmination of the suggestions and comments of the two public input opportunities and on-line posting of the draft can then be included in the proposed Tree By-law, along with an accompanying table of concordance to show where the draft by-laws changed.

A staff report with the recommended Tree By-law can then be presented to Committee in a public meeting. Additional comments and feedback from the Committee and any additional comments from the general public may be received and reported on prior to consideration by Council and its ultimate passage of a Tree By-law.

Some municipalities may not want to conduct public input until a temporary Tree By-law has been enacted. See Section 5.3 for more discussion about public input.

3.3.2. Separating Public and Private Tree By-laws

As the urban forest is largely managed at the municipal level, many municipalities have chosen to implement separate by-laws for trees on public and trees on private lands. In addition, having separate by-laws allow municipalities to be very clear about the requirements for tree protection and removal.

Public Tree By-laws (street trees, natural areas, parks, etc.) often include sections related to tree planting, tree care, tree maintenance, tree protection and/or preservation, tree removal and penalties for offences. The only exemptions that a municipality would be required to include are those listed in the *Municipal Act*.

While both public and private Tree By-laws have very similar definitions and sections on the permit process or enforcement, the sections pertaining to the application of the by-law and those exemptions chosen by the municipality may be very different.

One important consideration for both by-laws is how the by-law will apply in situations where a tree trunk lays partially on municipal and private property.

3.3.3. Value of requiring an Arborist report

A municipality may want to include a provision or a requirement for various types of plans or reports to be submitted as part of a permit application. An arborist report details specific and accurate information about the trees in question, such as location, species, size, condition, contribution and suitability for protection. It also identifies the work to be undertaken and appropriate protection measures. An arborist report helps determine the legitimacy or merit of requests for tree removal and enables efficient review of proposals by municipal staff.

3.4. Heritage Tree By-laws

Many jurisdictions are also developing separate Heritage Tree By-laws. The document “Heritage Trees Protection – Legislative Tools” can be downloaded from the Ontario Heritage Tree Alliance website: <http://www.oufc.org/ohtaresources.htm>. Ontario’s Urban Forest Council also has a “Heritage Tree Toolkit” available. This tool helps communities identify, research, nominate, evaluate and designate trees with heritage value. It can be ordered through <http://www.oufc.org/resources.htm>

4. Administering and Enforcing Tree By-laws

4.1. Appointing By-law Officers

The following is a sample By-law recommended for the appointment of individuals as Municipal Law Enforcement Officers. The authorizing legislation is the *Police Services Act*, R.S.O. 1990, c. P.15, s. 15 which states,

- “15 (1) A municipal council may appoint persons to enforce the By-laws of the county/municipality.
- (2) Municipal law enforcement officers are peace officers for the purpose of enforcing municipal By-laws.

Individuals are not appointed as Provincial Offences Officers under the provisions of a By-law.

Where individuals are properly appointed, the Order set down by the Solicitor General designating such individuals as Provincial Offences Officers will apply. Copies of such orders are posted on the MLEOA web site.

A By-law of The Corporation of to appoint a
Municipal Law Enforcement Officer
as authorized under the provisions of the *Police Services Act*.

WHEREAS pursuant to the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, the Council of any municipality may appoint Municipal Law Enforcement Officers who shall be Peace Officers for the purpose of enforcing the By-laws of the municipality;

AND WHEREAS Section 8 of the *Municipal Act*, 2001, S.O. 2001, c. 25 (“the *Municipal Act*, 2001”), provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

AND WHEREAS Section 9 of the *Municipal Act*, 2001, provides that Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 11 of the *Municipal Act*, 2001, provides that a single-tier municipality may pass By-laws respecting matters within the spheres of jurisdiction set out therein; (*NOTE: This reference will vary for upper tier and lower tier municipalities accordingly*)

NOW THEREFORE the Council of The Corporation of enacts as follows:

1. THAT (*specify full legal name of individual being appointed*) be appointed as a Municipal Law Enforcement officer in accordance with the *Police Services Act*, R.S.O. 1990, c. P.15, as amended for the ...(*specify name of municipality*)...for the term of his/her employment as a Municipal Law Enforcement Officer.
2. THAT this By-law shall come into force and have effect immediately upon the final passing thereof.

READ a first, second, third time and finally passed thisday of, 20XX...

MAYOR

CLERK

4.2. The Value of a local Annual Tree Protection Meeting

The value of an Annual Tree Protection public meeting can not be understated. When by-laws are set but not enforced or publicized, rumours and confusion are sure to persist. Annual meetings will refresh the importance of trees, clarify tree protection details, bring the public and professionals together, and reduce the tendency for the public and professionals to drift away from tree protection standards.

The public and professionals have basic notions regarding the protection of trees, but planning and implementing tree protection measures are often overlooked or ineffective. Providing a public forum where these details can be revealed and developed regularly is very important.

Tree protection standards and details may be published and readily available, but face-to-face contact with municipal staff and explanation of the rules will help ensure adherence and understanding of their purpose and importance. It is important to emphasize the importance that trees have to the public. Tree by-laws are not put in place to collect additional tax revenue or provide another layer of inconvenient red tape to urban development. Trees make a significant impact on the public everyday - this message is more easily conveyed in personal one-on-one settings. Trees are important to people, that is why Tree By-laws are in place.

Whether the meetings are segregated public and professional or mixed, is important to listen and address concerns of the public and use them to continually improve and address operational issues and problems that may be affecting tree protection. Receiving single complaints may not catch systemic problems that the public or professionals are frequently experiencing; a forum for group discussion can highlight group problems, and may also assist in providing suggested solutions.

If there is no regular effort put into publicly addressing the issues of tree protection, there may be a tendency for rumour and fallacy to work its way into standard process and move away from the original intent of the Tree By-law. Annual meetings can help focus the public, professionals, and staff to stay on target and not become distracted by side-line or process issues.

Finally, an Annual Tree Protection Meeting is an excellent opportunity to celebrate the benefits of trees. Trees aren't just about another by-law, obstacles, cost, or inconvenience. They are a great benefit to our urban environments and deserve the positive recognition!

4.3. Using Tickets For By-Law Infractions

For minor offences, the ability to issue tickets rather than the more onerous process of charging a person (under Part 3) has become a very useful tool in some municipalities.

The process to develop tickets for those that are not familiar with it is found in the Ministry of the Attorney General's document "*SET FINE "HOW TO" MANUAL*". It can be obtained from Kerry Lee Thompson, Crown Counsel with the Ministry of the Attorney General, Crown Law Office - Criminal at 720 Bay Street, 10th Floor Toronto, ON M5G 2K1 (416) 326-1831.

Table #1: Sample of short form wording.

Item	Short Form Wording	Offence Creating Provision or Defining Offence	Fine
1	Harvest Tree in designated area without Permit	Section 3(1)	\$1000 for all offences

2	Harvest Tree in designated area in contravention of conditions of Permit	3(2)	
3	Harvest Tree in Provincially Significant Wetland	3(3)	
4	Harvest Tree in Area of Natural or Scientific Interest	3(3)	
5	Harvest Tree in designated in reduction of Basal area below permitted threshold	3(4)	
6	Harvest Tree in designated area within 15 metres of public road	3(5)	

4.4. Working With Developers And The Development Process

The protection of trees during development is usually achieved during the Subdivision or Site Plan application review processes which provide the opportunity to ensure the protection of suitable existing trees and the enhancement of the Municipality's tree canopy. Trees on or adjacent to sites subject to Building Permits and Site Alteration Permit processes are also subject to the permitting process through a Tree By-law. This section provides information on how the Municipality should work with developers and consulting arborists through the development process (subdivided into phases), to minimize the impact of the development on trees for retention.

Below is an example. It is the process followed by the Town of Richmond Hill.

4.4.1. Planning Phase:

Municipality's expectation.

A preliminary tree evaluation needs to be completed to identify which trees are worthy of retention in their own right, without regard to the proposals of the site. Existing grade variations should be identified. This initial inventory of trees may also identify trees that may be suitable for relocation, including potential destination of the trees, either elsewhere on the property, or potentially onto other property owned by the Owner or the Municipality.

Trees worthy of retention should have minimum protection zones calculated and shown on a plan to be used as consideration for design constraints. Protection zones should be calculated using 30cm radius for every 2.5cm diameter at breast height (DBH), as a minimum standard.

The Developer's/Arborist's role.

The Developer/Arborist should prepare plans showing trees numbered, and these numbers cross referenced to tree tags on the site and an assessment table, including species, size, condition and pre-development recommendation for work on the trees (no tags for trees subject to the *Endangered Species Act 2007*). For forested sites the Ontario Ministry of Natural Resources (OMNR) forest inventory resource mapping may be used (species breakdown based on percentages) for preliminary information to be reviewed as more details become available affecting the trees. Other information should be included such as recommendations for preservation or removal based on condition. Possible work to be carried out on retained trees should be identified, i.e. pruning deadwooding, etc.

Plans should also identify trees on neighbouring property within 6m of the boundary and should also identify trees of any size that are subject to the *Endangered Species Act 2007*.

4.4.2. Design Phase:

Municipality's expectation.

Trees worthy of retention should be used as consideration for design constraints, i.e. the developer has used the Arborist report to help formulate a design that protects as many trees as possible that are worthy of preservation.

Revised tree preservation/tree relocation plan including the timing schedule for activities with documentation of site visits by Arborist for future reference should be provided.

Once the final design and tree preservation plan are approved by the Municipality a valuation of trees to be retained may be required. The consultant Arborist can provide this valuation. This valuation may be used to establish the amount of any securities to be taken for tree preservation.

The developer's/arborist's role.

The Arborist should advise the design team on impact of suggested designs on the viability of retaining trees, including grading and soil storage, construction access and vehicle maneuvering, servicing and drainage implications, height restrictions, materials (including fuel) storage, etc.

Preliminary design plans with grading plans and servicing as available should be circulated to the Arborist for comment and direction on changes required to ensure tree preservation.

The Arborist should advise the design team on protection of trees on neighbouring property by identifying Tree Protection Zones (TPZ). TPZ will be used as consideration during design constraints. Specifications will be provided for TPZ with proposed pruning or other work as needed based on the location of buildings and services. The developer is required to notify adjacent property owners of intended work and seek cooperation in advance of work carried out. The Municipality may require written confirmation from adjacent property owners of their agreement to works that may injure or destroy their trees.

The Arborist can advise on soil mitigation, irrigation, pre-emptive pruning, tree protection fencing and sediment control fencing.

The Arborist should provide information on which Plans, Plan numbers and revisions of Developers plans were used in the Tree Preservation plan submission

4.4.3. Pre-Construction Phase:

Municipality's expectation.

Determine TPZ layout and timing of installation/tree relocation, installation of TPZ signage on TPZ fencing, with contact details for the Arborist and details of the valuation of the trees. The Municipality may take securities against preservation of the trees agreed for retention. These securities would be based on the valuations agreed to above.

The developer's/arborist's role.

Set up meeting with Municipality's representatives to approve location of tree preservation fencing. Stake out and install tree protection fencing / sediment control fencing. Install TPZ signage on TPZ fencing, with contact details for the Arborist and details of the valuation of the trees. The Arborist is to advise the Municipal contact when work is complete. The Municipality representative may visit the site to validate this. Trees not identified for retention as shown on the approved tree preservation plan may be removed. There must be compliance with *Migratory Birds Convention Act, 1994*.

4.4.4. Construction Phase:

Municipality's expectation.

All measures to protect and preserve existing trees are maintained and in good working condition to ensure their health and survival. Non compliance with tree preservation may be dealt with through the Site Plan / Subdivision process (stop work orders / non release of securities) if the development is subject to those processes, or through a Tree By-law if that is felt to be more appropriate, or if the development is subject to Building Permit or Site Alteration Permit only.

The developer's/arborist's role.

The Arborist is to record all site visits and verification of tree protection/tree relocation effective during all phases of construction for future reference. The Developer/Arborist is to contact the Municipality if there is any non conformity with the approved tree preservation plans or if they have suggestions, corrections or mitigation recommendations. A site meeting may be required to provide direction with the developer's representative and Arborist to resolve issues. Work is to be scheduled as needed for corrective pruning, aeration, bark tracing, etc.

The Arborist is to visit the site as required to monitor construction impacts or as requested if unforeseen events necessitate it.

The Arborist is to certify that tree protection measures have been implemented throughout the project in accordance with their recommendations.

4.4.5. Post Construction Phase: The developer's/arborist's role.

Prior to TPZ fencing being removed and final grading, the Arborist is to undertake site review to determine if there are any issues related to the trees. Any tree work needed at this stage is to occur before final grading to allow for easier access, pre sod. The Arborist and developers representative are to direct the contractor who is responsible for final grading and sodding/seeding about how to minimize impacts on protected trees.

Relocated trees are to be assessed and maintenance work done as needed. The Arborist is to undertake post construction mitigation in accordance with their recommendations, such as remedial pruning, irrigation, deep root feeding, TPZ barriers/fencing removal, etc.

The Arborist is to continue monitoring the health of the trees post construction and make recommendations for ongoing work to mitigate the stress from construction on the trees. This is recommended for 3 years post construction.

At Assumption Application (for subdivisions), the Arborist is to visit the site to assess the trees and note any changes since previous visits. If there is significant alteration to grades or damage to trees the Arborist is to contact the Municipality for further review and direction.

During the assumption period the Arborist is to visit the site at least 2 times during the growing season until End of Maintenance or Final Landscape Letter of credit release to determine if any changes to the health of the trees is occurring and provide direction on measures to reduce tree mortality. Meetings are to take place with the developers' representative, Arborist and the Municipality to take appropriate measures at developers' cost to address the issues that are raised.

At the end of the Maintenance Application by the Developer the Arborist is to visit the site and identify tree health issues if any and make arrangements for appropriate action at the developer's expense. The Arborist is to sign off on the completion of tree protection process prior to the submission of the report to Council. At this point there may be a request for release of any securities (site plan) that may have been taken. Arborist is to visit the site and certify to the Municipality that all tree protection measures were installed and maintained throughout the entire project, and that any works proposed in the approved arborist report, were correctly undertaken.

Notes by the Arborist for each interaction, regarding issues, are to be documented in one package/location for further reference. Any tagging is to be removed at end of the maintenance stage when directed by the Municipality.

4.4.6. Other things to consider:

Trees listed on the *Endangered Species Act 2007* are protected at any size, and destruction of these species is subject to severe penalties.

The Municipality's public Tree By-law protects trees within the Town's Public Road Allowances

Migratory Birds Convention Act, 1994 may restrict the timing of tree removals.

The *Planning Act* allows Municipalities to impose conditions on Site plan control area; "As a condition to the approval of the plans and drawings referred to in subsection (4), a municipality may require the owner of the land to (a) provide to the satisfaction of and at no expense to the municipality any or all of the following: 6. Walls, fences, hedges, trees, shrubs or other groundcover or facilities for the landscaping of the lands or the protection of adjoining lands."

The *Planning Act* also allows Municipalities to impose conditions on Zoning by-laws; Committee of adjustment and Subdivision of Land applications. These conditions can include tree protection.

4.5. Form Templates and Other Information

4.5.1. Application for a Tree PERMIT to Destroy or Injure trees

The following suggestions are provided as a guide to assist municipalities in developing their application form. Make sure it is consistent with the by-law and consistent with the terms in the by-law.

- Filing date
- Landowner information: name, address, phone number, e-mail address
- Applicant: name, address, phone number, e-mail address if different from the owner
- Person or Company undertaking the work: name, address, phone number, e-mail address
- Property Description: Municipal Address, legal description, roll number
- A key map showing the location of the property
- A detailed map showing the property boundaries, vegetation type boundaries, adjacent property vegetation, fences, roads, trails, utility lines, windbreaks, watercourses, grass fields, railways, open areas, buildings, bridges, quarries, dams, treed floods or swamps, brush, marshes, debris piles, shallow rocky areas, orchards, hazard areas, developed agricultural lands, plantations, wetlands, topography, wooded areas and vegetation to be retained and removed. OR

- A Tree Protection Plan approved by an Arborist. The application should indicate in what circumstances an approved Tree Protection Plan is required
- Description of proposal: Size of area to be cut, number of trees to be removed, description of trees, plans to replant.
- List any additional applications affecting the subject property
- List any cultural or natural heritage features located on or adjacent to the subject property
- Signature of landowner and person undertaking the work
- Reference to the by-law
- Estimated start date and completion date
- Required application fee attached
- Additional information and instructions to the applicant such as when to expect a decision regarding their application, written consent of adjacent owners where trees to be cut straddle the property line,

For the benefit of the landowner, the application and permit may note that if the property is enrolled in the Conservation Land Tax Incentive Program (CLTIP) the landowner should contact the Ministry of Natural Resources CLTIP program administrator prior to engaging in management activities.

For the benefit of the landowner, the application and the permit could note and remind landowners that the issuance of a Tree Permit does not relieve them from any responsibilities under other legislation. There are many provincial and federal pieces of legislation that could affect tree removal or harvesting operations such as *Endangered Species Act*, *Fish & Wildlife Conservation Act*, *Migratory Birds Convention Act*, *Fisheries Act*, *Trespass to Property Act*, *Highway Traffic Act*, Ministry of Labour regulations, etc.

4.5.2. Application Fees

The *Municipal Act* allows fees to be charged on a full cost recovery basis so that the administrative costs of the application are entirely borne by the applicant.

The fee structure may therefore also be used as an incentive or disincentive. As an incentive to carry out Good Forestry Practices, consider charging less or nothing for a Good Forestry Practices Permit and more for a Circumference Limit Permit.

Some municipalities may also wish to consider no fees in any case as these by-laws can be considered for the greater good of the rate payers of the county/municipality. Various application fee schedules have been developed. There are various options and examples of fee schedules. Here are a few examples:

Example #1:

“Application Fees shall be paid to the Municipality at the time of application for a Tree Permit in accordance with the fees set by the Municipal By-law No_ “A By-law to Establish Fees and Charges to be Collected by the Municipality”, as amended.”

Example #2

“\$250 per application”

Example #3

“No Fee	1-4 trees to be removed
\$200	5 or more trees
\$500	10 or more trees”

Example #4

"No Fee	1-4 trees between 20cm and 76 cm
\$200 per tree	5 or more trees between 20cm and 76 cm
\$500 per tree	Any tree over 76 cm
\$200	Appeals"

Example #5

"\$100 per tree	Applications to Injure or remove trees not associated with construction related activity
\$300 per tree	Applications to Injure or remove trees associated with activity such as building, demolition, excavation, boring, placement of fill or surface treatment, storage of construction materials or equipment, storage of soil, construction waste or debris, movement of vehicles and equipment."

Example #6

"A cap or per acre/hectare fee for woodlands."

4.5.3. Tree Protection Plan Guidelines

The following are suggestions on what should be included in Tree Protection Plan Guidelines:

- Describe the purpose of the guidelines
- Describe the importance of protecting vegetation cover
- Indicate what qualifications are required to prepare such a Plan
- Outline the circumstances when such a Plan needs to be prepared.
- Require that prior to submission; the plan must be approved by an Arborist.
- Note that the Plan must be completed to the satisfaction of the By-law Administrator.
- Describe the format in which the Plan should be submitted i.e. paper, electronic, # of copies, etc.
- The Guide should require all plans to include:
 - Administrative Information
 - The owners name, address and telephone number
 - The applicants name, address, and telephone number if different from the owner.
 - The plan writers name, address and telephone number
 - The contractors name address and telephone number
 - The municipal address and legal description of the land
 - The purpose for which the Plan is being prepared
 - Property Information
 - Property Location
 - An inventory of all trees currently on the site, including species composition, size, age, and condition and health of trees.
 - A description of the environmental value of the trees within the site and their ecological function, including their context within the surrounding landscape such as specimen trees, species at risk and their habitat, presence of rare communities, etc.
 - A map that shows aerial photography, current vegetation, existing buildings and impervious surfaces, surface water features, steep slopes, wetlands, woodlands, valued woodlots, high quality trees, rare communities, species at

risk, greenspace linkages, roads and standard mapping elements such as a north arrow, scale, date and legend.

- Map that shows proposed development and conserved vegetation
- Identify the vegetation that will be retained and describe why it has been chosen for retention.
- Tree removal plans and any other activities planned that could injure trees with a schedule of proposed works, including the start and end dates.

4.5.4. Notice of Tree Removal

A Notice of Tree Removal should include:

- The Permit number
- Reference to By-law
- Property Location Description
- Municipal By-law Administrator's Contact name and number

The Notice may also include:

- Contractor name, phone number
- Owner
- Statement not to enter the property during Operations.

4.5.5. Order to Discontinue Activity

An Order to Discontinue Activity may include the following:

- A statement "YOU ARE HEREBY DIRECTED AND ORDERED TO forthwith stop, halt, cease, and desist from any and all works associated with the Destruction of Trees or removal thereof from those lands comprising;"
- Municipal Address
- Legal Description of the Property including LOT, CONCESSION, MUNICIPALITY
- Identified Owner / Individual Responsible For Destruction or Injury of Trees
- Description of Infraction
- Date of Inspection
- Effective Order Date (from and to).
- Signature of the Officer
- Date
- Clause stating "Pursuant to By-law {insert No.} Section __ Where the person to whom the Order is directed has been served in accordance with this By-law is not satisfied with the terms of the Order, the person may appeal to Council within 30 days after the date of the Order."
- By-law Administrator's Contact Information

5. Factors Contributing to Successful Tree By-laws

There are many elements of a successful by-law. These include:

- Recognition and identification of the need for a by-law;
- Public participation and support for a by-law;
- A well researched and well written by-law including a review of other recent Tree By-laws;
- A Tree By-law that is easily understood by the public, the landowners, elected officials, the forest or industry and arboricultural professionals;

- Commitment of municipal council and support for the administration of the Tree By-law;
- Commitment to maintaining appropriately trained by-law officers that understand forestry, know how to conduct a thorough investigation and gather evidence to achieve success in prosecution;
- Sufficient support to administer the Tree By-law;
- Penalties that are viewed as sufficient deterrents;
- Commitment to consistent and fair enforcement, and being prepared to pursue litigation; and
- A supporting education / information effort marketing and advertising of the Tree By-Law.
- Municipalities should be committed to;
 - developing a well written and enforceable Tree By-law;
 - administering the Tree By-law with appropriate staffing;
 - to enforcing the Tree By-law by employing a trained by-law Officer;
 - use Tree By-law as a tool to emphasize education and relationship building; and
 - prosecuting if necessary.

When a charge needs to be laid, the municipality must follow through with fines or prosecution to show that it's serious about the protection of their forests. The Tree By-law is at its best when used to educate and change attitude and behaviour for the benefit of everyone.

5.1. Using a Tree By-law as an Educational Tool

Tree By-laws are best used as an education and relationship building tool with Tree By-law officers working with loggers, developers and landowners to educate them about how good forestry and good arboricultural practices will benefit them, and how to implement good forestry and good arboricultural practices. Charges and prosecutions should be used only as a last resort when there is intention to carry out indiscriminate harvesting and to demonstrate that forest protection is a serious matter.

Loggers: With the help of a knowledgeable by-law officer committed to educating, loggers will learn more about good forestry practices and will see the benefit of learning more. They may be convinced to participate in the provincial tree marking course and other courses to learn more about silviculture prescriptions, tree marking, logging damage and sustainable forest management.

The community will learn about the many benefits of Tree By-laws and sustainable forest management during open houses and public meetings especially during by-law development. They will call and ask questions about logging when they see it occurring, providing more opportunities to educate them about forestry practices.

Landowners will learn as they go through the process of applying for a permit and working with forestry professionals in the management of their forest. They will more likely attend Woodlot Conferences and other Stewardship Opportunities.

5.2. A Pamphlet

It is advisable that the municipality, city or town prepare and widely distribute a pamphlet outlining, in plain language:

- the purpose of the by-law;

- the benefits of the by-law, including the public benefit of private forests and urban tree cover;
- good and bad forestry and arboriculture practices;
- what a landowner can and can't do under the by-law i.e. plain language interpretation of the By-law; and
- who to contact for more information.

5.3. Public Input

The support of the public is critical to the success of a Tree By-law. A public input process should be used throughout the entire process of developing the by-law. The process should include initial public comment on the concept of a by-law or its revisions. The public should be involved in the review of any draft and final draft. Care will be needed to consider or incorporate a broad range of informed views on the subject.

It should be noted that the *Municipal Act* does not require public consultation for the passing of a Tree By-law. Public consultation is usually done to obtain support for the by-law, and to ensure that the by-law reflects the specific issues present in the community. However, municipalities should be aware that once public consultation on a Tree By-law begins, especially where there is not an existing Tree By-law in place, there may be an increase in tree removal in the community as some property owners will not want to be required to comply with additional regulations related to trees on their properties. Some municipalities have passed a Tree By-law without public consultation, and then committed to a one year period of monitoring and public input, after which amendments may be made to improve the by-law. This option permits the municipality to both protect its tree coverage and respond to public concerns.

By-laws work best where there is a community interest or concern in maintaining the forest cover on the landscape and/or ensuring that good forestry practices are used.

Where there is no existing Tree By-law prior to initial discussion about a Tree By-law, the municipality runs risk of woodlots being liquidated in anticipation of a new Tree By-law. Some municipalities put in a temporary by-law and then do public consultation to refine it later.

5.4. Competency of Tree By-law Officers

Municipalities hiring staff to enforce Tree By-laws are strongly encouraged to seek people with qualifications equivalent to either a Registered Professional Forester, a Bachelor of Science in Forestry, or a College Certificate as a Forest Technician. Or, in the case of lower tier tree protection by-laws, an expert in the care and maintenance of trees such as an arborist certified by the Ontario Ministry of Training, Colleges and Universities or the International Society of Arboriculture, or an arborist registered with the American Society of Consulting Arborists.

It is very beneficial that these staff have a good understanding of forestry and urban forestry principles and dendrology. Experience or some education in law enforcement would also be an asset. These credentials will be invaluable during enforcement and the prosecution process.

The municipality should make a commitment to the training and upgrading of their Tree By-law Enforcement Officers. Staff already employed to enforce a Forest Conservation By-law, should receive the training as listed below. The basic Tree Marker Training Program and the By-law Officers Course are considered minimum training requirements.

1. The Ministry of Natural Resources “Tree Marker Training Program”. (For dates and applications, contact Scott McPherson: 705-475-5571 Email: scott.mcperson@ontario.ca)

Level 1 – Basic One Week Training Course in Dorset, Ontario
Level 2 – Tree Marking Auditor Course – How to carry out an audit of a tree marking job.
Participants must be fully certified in both hardwood and conifer marking.
Level 3 – Prescription Writing Course – This course is conducted only occasionally.
Experience is a prerequisite.
Refresher Modules are held across Ontario wherever a group agrees to host one.
2. The “By-law Officers Course” put on by the Municipal Law Enforcement Association covers things such as collection of evidence under the *Provincial Offences Act*, preparing evidence for court, and taking statements. One week course held in Gravenhurst Ontario (contact Debbie Callaghan (905) 832-2281 ext 8045).
3. Attend the Annual Forest Conservation By-law Meeting (Contact: Doris Krahn 705-755-3215 or doris.krahn@ontario.ca)
4. Staff should also have a good understanding of the Managed Forest Tax Incentive Program. (contact Ontario Forestry Association 1-800-387-0790, mftip@oforest.on.ca or Ontario Woodlot Association 1-888-791-1103, info@ont-woodlot-assoc.org)

6. Support and Information

6.1. Ontario Ministry of Natural Resources (OMNR)

- Provides district staff to assist in by-law development and enforcement
- Provides a coordinator for the by-law committee & a networking service.

6.2. Forest Conservation By-law Committee

- Has been in place for approx 15 years.
- Meets once or twice per year (or more depending on current issues) (either in person or via conference calls) to discuss and deal with issues relevant to Tree By-laws across Ontario.
- Will provide assistance to other municipalities if needed such as to discuss issues or review draft by-laws, etc.
- Encourages more effective and consistent application of forest conservation by-laws by having developed a Template by-law.
- Helps a voluntary host municipality put on an Annual Meeting for all forest conservation by-law officers in Ontario to exchange information on things such as by-law development, best practices and enforcement challenges.
- Includes the Ontario Woodlot Association as a member and who have posted by-law information on www.ontariowoodlot.com
- Includes the Ontario Professional Foresters Association who participate to ensure the forestry profession and its legislation is appropriately represented.

6.3. Lower Tier Tree By-law Advisory Group

- Was initiated in 2010.
- Will meet via conference calls once or twice per year to discuss current issues.
- Encourages more effective and consistent application of lower tier tree by-laws by having developed a Template by-law.

- Will provide assistance to other municipalities if needed such as to discuss issues or review draft by-laws, etc.

6.4. More information on the Internet

A web site and Forestry Services Directory for Landowners developed by the Ontario Woodlot Association is home to Forest Conservation By-law information. This information will be of interest to forest owners, municipal staff, loggers and any other interested people. The site contain lots of information including; this document, a current map of by-laws across Ontario, the contact names for Tree By-laws in municipalities that have Tree By-laws, links to municipal web sites that have their by-laws on the web, a link to the legislation that allows municipalities to enact Tree By-laws and other information. The web address is www.ontariowoodlot.com.

Also see the International Society of Arboriculture (ISA) <http://www.isa-arbor.com/> and the Ontario Urban Forest Council (OUFC) <http://www.oufc.org/>.

6.5. Tree By-law Templates

Three Tree By-law templates have been developed to assist municipalities in the development and upgrading of Tree By-laws. One is for use by lower tier and single tier municipalities (including cities, towns and townships) and two are for use by upper tier and single tier municipalities. These templates have been developed by the Forest Conservation By-law Committee, the Lower Tier Tree By-law Advisory Group and the Ministry of Natural Resources. They have been developed to assist municipalities in the development and upgrading of Tree By-laws and to encourage more consistent format between Tree By-laws making it easier to adhere to when working in and across the boundaries of various municipalities. These templates are also found on the website www.ontariowoodlot.com.

A template for Heritage Tree By-laws is found in the document “Heritage Trees Protection – Legislative Tools” which can be downloaded from the Ontario Heritage Tree Alliance website: <http://www.oufc.org/ohtaresources.htm>

Appendix A: ACKNOWLEDGEMENTS

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Appendix B: Excerpt from the *Municipal Act*

Municipal Act, 2001 S.O. 2001, CHAPTER 25

Tree By-laws

135. (1) Subject to subsection (4) and without limiting sections 9, 10 and 11, a local municipality may prohibit or regulate the destruction or injuring of trees. 2006, c. 32, Sched. A, s. 71 (1).

Woodlands

(2) Without limiting sections 9, 10 and 11, an upper-tier municipality may prohibit or regulate the destruction or injuring of trees in woodlands designated in the by-law. 2006, c. 32, Sched. A, s. 71 (1).

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) Without limiting sections 9, 10 and 11, a municipality may, in a by-law passed under this section,
(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); 2006, c. 32, Sched. A, s. 71 (2).

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).

(11) Repealed: 2006, c. 32, Sched. A, s. 71 (3).

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).

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. 2001, c. 25, s. 139; 2006, c. 32, Sched. A, s. 73.

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. 2001, c. 25, s. 140; 2006, c. 32, Sched. A, s. 74.

Authority to establish fines

429. (1) Subject to subsection (4), a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act. 2006, c. 32, Sched. A, s. 184.

Same

(2) Without limiting subsection (1), a system of fines may,

- (a) designate an offence as a continuing offence and provide for a minimum and maximum fine for each day or part of a day that the offence continues;
- (b) designate an offence as a multiple offence and provide for a minimum and maximum fine for each offence included in the multiple offence;
- (c) establish escalating fines for a second and subsequent convictions for the same offence; and
- (d) establish special fines in addition to the regular fine for an offence which are designed to eliminate or reduce any economic advantage or gain from contravening the by-law. 2006, c. 32, Sched. A, s. 184.

Restrictions

(3) The following rules apply to the system of fines:

1. A minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000. However, a special fine may exceed \$100,000.
2. In the case of a continuing offence, for each day or part of a day that the offence continues, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite paragraph 1, the total of all of the daily fines for the offence is not limited to \$100,000.
3. In the case of a multiple offence, for each offence included in the multiple offence, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite paragraph 1, the total of all fines for each included offence is not limited to \$100,000. 2006, c. 32, Sched. A, s. 184.

Fine under another Act

(4) If the provisions of any other Act, other than the *Provincial Offences Act*, provide for the fines for a contravention of a by-law of a municipality, the municipality cannot establish a system of fines under this section with respect to the by-law. 2006, c. 32, Sched. A, s. 184.

Definition

(5) In this section,
“multiple offence” means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of a by-law. 2006, c. 32, Sched. A, s. 184.