

DISPUTES OVER BOUNDARY TREES

Who Owns That Tree?

Heather M. Picken

The saying that “good fences make good neighbours” may not extend to trees after a recent Ontario Superior Court of Justice decision. A tree that grows on a property boundary (a “boundary tree”) is now considered the property of both neighbours, even if only one of the neighbours originally purchased it and planted it.

Hartley v. Scharper concerns a large, old Norway maple located on the Hartley property in central Toronto. Hartley feared it was unsafe and wanted to cut the tree down, but her neighbours opposed. When Hartley sought a declaration that she owned the tree and could have it removed, the court disagreed, stating that because part of the trunk of the tree below the soil straddled the property boundary, both neighbours owned the tree, regardless of who originally planted it. The case was upheld on appeal, so now one owner cannot unilaterally remove a boundary tree, even if it is decayed and poses a danger. Both owners must consent to the removal of the tree.

In the Hartley case, the judge quoted section 10(2) of the Ontario Forestry Act, “every tree whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining lands,” but expanded the definition of “trunk” to mean “the entire trunk from its point of growth away from its roots up to its top where it branches out to limbs and foliage. It is not only the arbitrary point at which the trunk emerges from the soil that governs.”

Under Section 10(3) of the Ontario Forestry Act, it is an offence to injure or destroy a tree growing on the boundary between adjoining lands without the consent of both landowners. On conviction, an offender can receive a fine of up to \$20,000 and three months in jail!

Most municipalities have bylaws requiring property owners to obtain permits if they want to remove trees on private property. The City of Brampton’s bylaw provides for certain exemptions from this requirement, such as the removal of “hazardous trees” or “trees located within two metres of an occupied building.” However, a property owner who wants to remove a tree that is overgrown or no longer aesthetically pleasing will have to submit a report from a qualified arborist to demonstrate that the “injuring of the tree” is justified, with details about how the tree will be removed and what mitigation measures will be taken, including the planting of a replacement tree to the City’s satisfaction. The City of Brampton also requires the written consent of the adjoining property owner if the tree is a boundary



tree. A person convicted of any offence under the City of Brampton’s by-law is liable for a fine of up to \$100,000.

Even if a permit is obtained from the municipality, if the tree is a boundary tree property owners must still obtain their neighbours’ consent to destroy the tree. The Hartley case also confirms that even if a boundary tree is decayed so that a municipal removal permit may not be required, the consent of the adjoining owner must be obtained before removal of the tree or civil liability may arise. Shared ownership of a boundary tree may also mean shared financial obligations for its maintenance or removal.

Lawrences’ Real Estate and Litigation Groups have extensive experience helping property owners resolve disputes promptly and efficiently.



Heather Picken is co-managing partner and head of Lawrences’ Real Estate Group. Heather can be reached at (905) 452-6891 or hpicken@lawrences.com.

Most municipalities have bylaws requiring property owners to obtain permits if they want to remove trees on private property.