

**Press Release:**

**Landmark Court Case Protects Private Trees in Ontario**

TORONTO--May 21, 2013

A landmark decision on the environment was reached on May 17, 2013 by the Ontario Superior Court of Justice in Toronto.

Justice Moore ruled that trees whose trunks grow across private property lines are the common property of both owners. Owing to this ruling, one owner cannot injure or destroy a shared tree without the consent of the neighboring owner.

Under the Ontario Forestry Act, which Justice Moore cited, violation of this provision could result in a \$20,000 fine and/or imprisonment. The ruling gives better protection to trees located on private property and helps preserve Toronto's dwindling tree canopy.

Justice Moore also rejected the argument that the only thing that matters when determining shared trees is whether the trunk crosses the boundary line at ground level. According to his ruling, if any part of the tree's trunk crosses the property boundary, it is a co-owned tree.

This new ruling now prevents one owner from arbitrarily and unilaterally removing a tree whose trunk straddles a property line—a practice that expert arborists claim is happening with alarming frequency throughout Toronto and other municipalities.

The ruling comes from *Hartley vs. Cunningham et al., 2013 ONSC 2929*, in which Toronto resident Katherine Hartley sued her neighbors to obtain sole ownership over a mature, healthy maple tree whose trunk also grew in her neighbor's yard. Without notice to her neighbors, Hartley obtained a permit to destroy the tree from the City of Toronto's Urban Forestry department.

Clayton Ruby, counsel for the Scharpers, successfully argued that the maple tree was not only healthy, but also that if any part of a tree's trunk is growing across a property line, it is co-owned and cannot be injured or destroyed without a neighbor's consent. According to Mr. Ruby:

"This ruling reduces the number of trees that can be cut down without the adjoining property owners' consent. Toronto's tree canopy is a precious common resource that helps make Toronto the beautiful, livable place we all love."

Ms. Hartley obtained a permit to destroy the maple tree on the basis of a report produced by a non-certified arborist who had also been hired to remove the tree. The Scharpers commissioned a report by expert, certified arborists who concluded that the tree was healthy and vigorous, and would benefit from cabling.

The Scharpers subsequently shared their report with the City and asked that the permit be suspended until the matter was properly investigated. Mr. Jim Hart, General Manager of Toronto's Parks, Forestry and Recreation, declined to suspend the permit and took no further action.

Hilary and Stephen Scharper, both professors at the University of Toronto, were delighted and relieved by the ruling:

“Not only is this healthy, beautiful tree saved, but also potentially tens of thousands of shared trees across the province now have an extra layer of protection. The ecological benefits of these trees are so critical to the health of Ontario's municipalities and this ruling is a huge step forward in tree conservation.”

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