

Small claims dispute over dead trees dragging on

By AdvocateDaily.com Staff



A legal dispute between two neighbours that's rooted in a row of dead cedar trees is running on the "longer side" as far as small claims matters go, Toronto civil litigator **Sarah O'Connor** tells the *Hamilton Spectator*.

"I normally advise my clients it's about two years," she says.

O'Connor, principal of **O'Connor Richardson Professional Corporation**, which has offices in Toronto and Hamilton, says there tends to be more leeway in small claims court compared to Superior Court, where heftier cases are litigated.

"Small claims is the court of the people," she says. "The rules of evidence are a little more relaxed. How you question witnesses is more relaxed. The judges are used to laypeople arguing their case."

O'Connor comments generally on the matter and isn't involved directly.

None of the allegations has been tested in court, the article notes.

The dispute, which has turned into a \$15,000 small claims battle, was launched in 2014 after one neighbour accused the other of deliberately destroying the cedars he planted in the backyard of his Hamilton-area home, says the newspaper.

The defendant pleaded his innocence and asked for a judge to toss the case, which he claims is baseless, says the article.

The plaintiff claims the trees, planted in May 2012, were "healthy" that first summer but by the end of August, four of them started to die and he says he saw a "mysterious white residue on the branches and leaves of the dying cedar trees."

"In September 2012, the plaintiff says he bought new cedars to replace the dead ones and noted they'd been cut on his side of the fence," says the article.

Police were called and one officer's report included in the court file noted that police "cautioned" and "reminded" the defendant, who has since sold the home, to only trim branches on his side of the property, says the newspaper.

No charges were laid at that time, it says.

The defendant launched a counterclaim of \$20,000 for the cost of selling his home, time spent preparing his defence, loss of wages due to days off and stress, reports the *Spec*.

"The Ontario government says about 135,000 small claims are issued in the province every year compared to 178,000 civil cases filed in other areas of the court system," says the article.

The Ministry of the Attorney General notes in the newspaper that small claims court is "intended to be the forum where smaller disputes are resolved in a timely, inexpensive and informal manner."

O'Connor says the bar for small claims disputes has been set too high. The province's decision to raise the cap to \$25,000 from \$10,000 a few years ago hasn't been helpful, allowing for more complex disputes in the forum, she says.