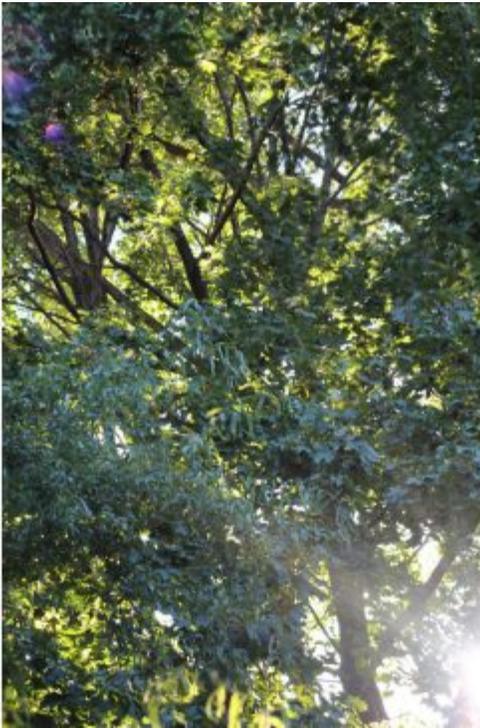


By: Jane Gerster Staff Reporter, Published on Tue Dec 10 2013

Disputed tree belongs to neighbours on both sides of property line, appeal court rules

On Tuesday the Ontario Court of Appeal upheld a May ruling that declared Katherine Hartley and her neighbours co-owners of the Norway maple on Humewood Dr. The neighbours who did not want the maple cut down called the ruling a “fantastic” outcome for “trees and the people of Ontario.”



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A massive Norway maple tree has caused an expensive legal dispute for neighbours in North York who have argued over one property owner's rights to cut the tree down. On Tuesday, the Ontario Court of Appeal upheld a May ruling that neighbours on both sides of the property line own the tree jointly.

A massive, decades-old Toronto maple tree that has soured neighbour relations and cost thousands in court fees has been given a new lease on life — with wider implications for property owners across the province.

On Tuesday the Ontario Court of Appeal upheld a May ruling that declared Katherine Hartley and her neighbours co-owners of the Norway maple on Humewood Dr.

The ruling gives both Hartley and her neighbours Hilary Cunningham and Stephen Scharper (Scharper is a monthly freelance columnist for the Star) an equal say in its fate, and means any attempts to remove the tree without mutual consent can result in a fine of up to \$20,000 or a prison term of up to three months or both.

It ends a more than [year-long attempt by Hartley to remove the tree](#), which she argues is entirely on her property, unhealthy and a safety risk.

But Cunningham and Scharper say the tree is safe, healthy and irreplaceable.

In court, the duo smiled and held each others' hands as the decision was handed down; Hartley sat surrounded by two friends and left soon after, refusing to comment.

The decision is a watershed moment for trees.

The Ontario Forestry Act stipulates that any tree “whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining land,” but doesn't specify what constitutes a “trunk.”

While the two disagree on where and how much of the trunk of the Humewood tree crosses the line, the ruling clarifies that if any part of a trunk — from the roots to the branches — crosses a property line, it's [a boundary tree](#).

“For trees and for people of Ontario, we're all breathing easier after this decision,” said Scharper, who called the decision “fantastic.”

“It now means that no one can arbitrarily cut down a [mature tree that is doing remarkable environmental work](#) if it's a co-owned tree.”

However, Hartley's lawyer, John Howlett, argued the ruling actually makes it harder to take care of trees, saying it means “nobody can do anything to a tree, even the most basic maintenance, without the consent of the other.”

But the three-justice appeal panel disagreed and ordered Hartley to pay \$10,000 for the appeal costs, separate from the roughly [\\$7,000 the Scharpers' crowd-funded](#) for the appeal.

Although Hartley could appeal again, Howlett said, “this is probably the end of the road.”