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Trees are often a welcome amenity in both urban and rural areas; they can provide shade and can serve as windbreaks or privacy barriers. They can also be intentionally planted to mark property lines. Over time, lateral growth of tree limbs means they may extend across property lines into neighbouring properties, depending somewhat on placement, species and growth habit. When this occurs, there is a balancing of rights (to trim offending branches) and responsibilities (to maintain the tree) between neighbours on both sides of the boundary. In some instances, overhanging and encroaching branches or other forms of vegetation may become a nuisance, entitling the affected landowner to damages. This month's issue examines a few such cases from the British Columbia Civil Resolution Tribunal<sup>1</sup> in recent months including *Rossi v. Poon*<sup>2</sup> and *Abbeyfield Houses of Vernon Society v. Budrow*.<sup>3</sup> Claimants were not successful in either of these cases, with the tribunal imposing a threshold that the encroaching vegetation be first considered as objectively unreasonable in that it damaged neighbouring property or otherwise directly interferes with a person's ability to use their land. Land surveyors and real estate lawyers alike are generally not involved; these disputes are most often pursued without the assistance of either.

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## Boundaries and Overhanging Tree Branches: Self-help or a Nuisance Claim?

**Key Words:** *airspace, nuisance, boundary tree, encroachment, self-help, interference*

Shared hedges or treelines are often used as natural and aesthetic alternatives to fencing to mark a boundary. However, to a much greater extent than the boards or wire of a fence, a tree or hedge will have a depth and continuous vegetative growth that does not respect boundary lines. At times, such growth can become an unwanted feature to one of the property owners –

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<sup>1</sup> While the focus is on BC cases, such claims are not unique to that jurisdiction.

<sup>2</sup> *Rossi v. Poon*, 2025 BCCRT 656 (CanLII), <https://canlii.ca/t/kc7cp>

<sup>3</sup> *Abbeyfield Houses of Vernon Society v. Budrow*, 2025 BCCRT 700 (CanLII), <https://canlii.ca/t/kc9l9>

especially if maintenance and pruning is neglected for some time. What are the rights and responsibilities of the two property owners with respect to such growth? This is the underlying theme in a multitude of cases dealing with claims related to encroaching vegetation and costs of maintenance. Given the relatively low monetary amounts for such claims (often under \$5000 for arborist or landscaper fees) and the fairly straight forward fact scenarios, these matters are generally dealt with in Small Claims Court or tribunals, such as the British Columbia Civil Resolutions Tribunal, often with the parties being self-represented. Simple as they may seem, such claims are still of interest to the land surveyor who may be called upon to confirm the precise location of the boundary relative to the vegetation at issue. They also present an interesting discussion of the nature and extent of the rights of land owners to the useable airspace above the ground.

The facts of the case in *Rossi v Poon*<sup>4</sup> were very simple. The applicant owned the property next door to the respondent and alleged that cedar hedges and trees on the respondent's property had become overgrown to the point of encroaching onto his property. The applicant paid about \$2000 to have the vegetation cut back to the property line and then brought a claim against the neighbour to recover the expense. The two issues in the dispute were put simply by the Tribunal Chair as:

- Did the trees and hedges on the respondent's property cause a nuisance?
- If so, is the applicant entitled to be compensated for the cost to trim them?

In this scenario, the cedar hedges and other trees were all located on the respondent's side of the property line and photographic evidence clearly showed that branches were extending across into the applicant's property to varying degrees. This had been going on for some time with the applicant complaining to the respondent for nearly a decade through email. After unsuccessfully attempting to get the respondent to take responsibility for the trimming, the applicant hired an arborist and then brought a claim in nuisance against the respondent for that expense.

The Tribunal Chair then briefly summarised the basic rights and responsibilities of the parties and the components of nuisance in the context of the dispute as follows:

Mr. Rossi's argument is that any encroaching vegetation is a nuisance. He argues that Ms. Poon is "wholly responsible" to ensure that nothing overhangs the property line. I do not agree with this blanket statement. Ms. Poon is not responsible for ensuring that her trees or hedges never go over the property line. The law of nuisance is more complicated than that.

First, it is well-established that Mr. Rossi's ownership of his land entitles him to decide whether, or to what extent, vegetation from neighbouring properties encroaches on his property, including in the air. So, he was perfectly within his rights to hire the arborist to trim

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<sup>4</sup> *Supra*. Note 2

the branches back to the property line. However, Ms. Poon is only responsible for the cost of that trimming if the branches were a nuisance.

A nuisance occurs when there is a substantial, non-trivial, unreasonable interference with the use and enjoyment of property. When there is actual physical damage, that is a strong indication that the interference is unreasonable. (citation omitted) The test for a nuisance is objective, meaning that the question is not whether Mr. Rossi subjectively found the encroachment unreasonable. He clearly did. Rather, the question is whether an objective bystander would consider the encroachment unreasonable.<sup>5</sup>

Reference was also made to other caselaw addressing encroaching vegetative growth. A finding of nuisance is quite fact-specific and dependent on the nature and the extent of the encroachment and the difficulty of removing that encroachment. Similar encroachments of cedar hedge branches that did *not* cause damage to property were not considered to be a nuisance. However, in one instance where there was persistent sprouting of bamboo across a property line that was difficult to remove and required near constant effort resulted in a nuisance being found (in spite of there being no property damage *per se*). Large, low branches substantially overhanging a property line were also found to be a nuisance.

There are other CRT decisions about plant encroachments that help illustrate these principles. In *Hu v. Ding*, a cedar hedge grew over the property line. The applicants claimed the cost of a landscaper to cut it back. The CRT dismissed the claim because there was no physical damage and the hedge did not obstruct the applicants' access to their yard. (citation omitted) The CRT reached the same conclusion about a cedar hedge in *Campbell v. Nicholson*.

In contrast, *Parker v. Hsieh* was about running bamboo that had spread beyond the property line and into the neighbouring yard. Again, there was no physical damage, but the bamboo was sprouting farther into the applicants' yard every year. It was increasingly difficult to remove. So, the CRT concluded the bamboo was a nuisance. (citation omitted) In *Seivewright v. Neal et al*, the CRT accepted that tree branches overhanging the property line were a nuisance because the encroachment was substantial (around 10 feet) and hung low enough that the branches hit the applicant in the face when he walked under them. (citation omitted)

What I take from these decisions is that, in general, plant growth will be objectively unreasonable if it damages neighbouring property or otherwise directly interferes with a person's ability to use their land. There is no evidence that any of the encroaching vegetation in this case caused any damage.<sup>6</sup>

In reviewing the evidence, the Tribunal Chair found that the arborist's invoice gave an objective assessment of the extent of the encroachment, being somewhat more helpful than the

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<sup>5</sup> *Supra*. Note 2 at paras 11-13

<sup>6</sup> *Supra*. Note 2 at paras 14-16

photographs taken by the parties. In the end, it was found that the offending branches were not an objectively substantial intrusion and therefore not a nuisance. The applicant's claim was unsuccessful.

There are several before-and-after photos in evidence of the front and back yards. The photos of the backyard are difficult to interpret because they are taken at angles. Some make it appear that the branches overhang considerably, while others make the encroachments look less significant. One thing the photos do make clear is that most of the overhanging branches are well above head height, meaning they do not directly interfere with Mr. Rossi's use of his yard. I find that any impact from the overhanging trees would relate to shade or falling leaves. Mr. Rossi did not say what, in particular, bothered him about the overhanging branches.

The arborist's invoice provides some objective evidence about these trees. It says that they would cut back one to four feet from the canopy. Considering the height above ground, I do not consider this to be a substantial amount. I recognize that some of the encroaching branches near the fence encroach at or near head height. However, these encroachments are small and I find would not reasonably reduce Mr. Rossi's ability to use his yard fully.

Ultimately, while I do not doubt Mr. Rossi's evidence that he strongly disliked the overhanging branches, I am not persuaded they unreasonably interfered with his use and enjoyment of his property. Whether to have a backyard partially covered by a canopy of branches or a backyard with a clear view of the sky is a matter of personal preference, over which reasonable people will have differing views.

As for the front yard, again the photos do not make clear how far across the property line the cedar hedge went. However, an after photo shows the property line stakes were perhaps two or three feet past where the arborist trimmed. The arborist's invoice said they removed two to four feet from the hedge. This is consistent with Ms. Poon's allegation that the encroachment was only six inches. Objectively speaking, this is not a substantial intrusion.

The *Rossi* decision was cited by the same Tribunal in the more recent case of *Abbeyfield Houses of Vernon Society v. Budrow* which had a near identical fact scenario and statement of the issues. The Tribunal Member described the facts and basic rights of the neighbours as follows:

The parties share a property line. Several different types of tall deciduous trees sit along the length of the property line. Photographs provided in evidence show many branches from these trees extend over the property line, overhanging the roof and touching the gutters of the 2-storey house on the applicant's property. These trees are undisputedly on the respondent's side of the property line.

The applicant says in March 2023 it started asking the respondent to come onto the applicant's property to trim the respondent's overhanging trees. The applicant says the respondent initially agreed but later refused to trim the branches on the applicant's side of the property line. The applicant asked the respondent several times in July, August and September 2023 to trim the overhanging branches. On October 26, 2023, the applicant hired

a tree removal contractor to trim the trees. The receipt provided in evidence says the contractor trimmed to clear all service lines and roofline eavestrough encroachment.

The applicant says the encroaching trees caused a nuisance, and that the respondent is liable to pay for the trimming on the applicant's side of the property line. The applicant also says the encroaching trees damaged the roof and eavestroughs on the applicant's house.

The respondent says it was not their responsibility to prune the trees on the applicant's side of the property line. It is well-established that a property owner can trim overhanging branches back to the property line that are encroaching on their land (See *Kiessling v. Varga*, 2002 BCSC 90 at para. 17).

So, the applicant was within its rights to hire the tree contractor to trim the branches. The respondent is only responsible for the trimming cost if the branches were a nuisance.<sup>7</sup>

On the issue of nuisance, the Tribunal Member stated the following:

A nuisance occurs when there is a substantial, non-trivial, unreasonable interference with the use and enjoyment of property. When there is actual physical damage, that is a strong indication that the interference is unreasonable. (see *Murray v. Langley (Township)*, 2010 BCSC 102, paragraph 33, citing *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64). The test for a nuisance is objective, meaning that the question is not whether the applicant subjectively found the encroachment unreasonable. Rather, the question is whether an objective bystander would consider the encroachment unreasonable.

In *Rossi v. Poon* 2025 BCCRT 656, a vice chair reviewed several CRT decisions involving encroaching vegetation and concluded that encroaching vegetation is considered objectively unreasonable where it damages neighbouring property or otherwise directly interferes with a person's ability to use their land. While this decision is not binding on me, I find its reasoning persuasive and so I adopt it here.<sup>8</sup>

While there was some expense incurred for maintenance and trimming of the trees around service lines and complaints from the applicant that leaves and debris from the trees collected in the roof valleys and gutters, no damage to roof shingles or other parts of the property was found. Further, no unreasonable interference with the applicant's ability to use his property was found. The nuisance claim was unsuccessful.

As stated above, the tree trimming receipt shows that the contractor trimmed to clear the service lines as well. There is no evidence before me that the applicant suffered any loss from the branches overhanging the service lines. The applicant did not provide any other evidence of other ways that the overhanging trees interfered with the applicant's ability to use its land.

Although the photographs show that the overhanging branches are unsightly, I am not persuaded by the available evidence that they unreasonably interfered with the applicant's

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<sup>7</sup> Supra. note 3 at paras. 10-13

<sup>8</sup> Supra. note 3 at paras. 15-16

use and enjoyment of its property. So, I find that the encroaching trees were not a nuisance. For that reason, I dismiss the applicant's claim.<sup>9</sup>

The objective test for nuisance is a fairly strict one that arguably works to strike a balance between the rights and interests of neighbours' mutual respect for the enjoyment of their respective properties. Owners need not be burdened with the responsibility of ensuring that trees or hedges growing on their property meet the aesthetic expectations of their neighbours, but at the same time, where vegetative growth becomes an objectively unreasonable interference with a neighbours' use of their own property, a line has been crossed. Consider also the social cost of these disputes and their similarity to litigation over fences and specifically "spite fences."

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## **Cross-references to *Principles of Boundary Law in Canada***

Readers may find the subject matter considered in *Rossi v. Poon* as trivial or unimportant. But this is not true for the neighbours involved. Trespass and nuisance fences are discussed in Appendix 1, *The Canadian Context of Common Law for Land Surveyors* at page 469 and ff.

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## **FYI**

There are many resources available on the **Four Point Learning** site. These include self-study courses, webinars and reading resources – all of which qualify for *formal activity* AOLS CPD hours. These resources are configured to be flexible with your schedule, range from only a few hours of CPD to a whole year's quota.

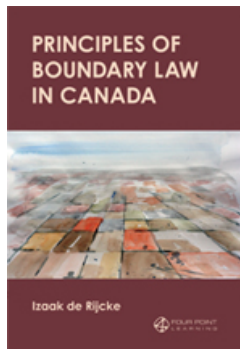
### **Course: *Survey Law 1***

**Survey Law 1** provides a foundation for professional surveyors to integrate legal principles, legislation and regulations within the overall framework of property boundary surveys. This course will be taught online Wednesday evenings during this fall by Izaak de Rijcke, starting September 3<sup>rd</sup>. For more information, consult the [syllabus](#). Please go to Four Point Learning to [register](#).

## ***Principles of Boundary Law in Canada***

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<sup>9</sup> *Supra.* note 3, at paras. 19-20



In the context of (1) the complex and ever-evolving nature of boundary law, (2) the challenges of doing legal research in this area, and (3) the constant interplay between land surveying practice (as a regulated profession with norms codified in statutes) and common law principles, land surveyors need a current reference work that is principle-based and explains recent court decisions in a manner that is both relevant and understandable.

See [\*Principles of Boundary Law in Canada\*](#) for a list of chapter headings, preface and endorsements. You can mail payment to: **Four Point Learning** (address in the footer of the first page of this issue of *The Boundary Point*) with your shipping address **or** [purchase](#) online. (NB: A PayPal account is not needed.)

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