

# north shore news

## Lawyer weighs in on common conflicts

[Todd Major](#) / North Shore News

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A common issue experienced by neighbours is whether the branches of a tree or hedge can be legally cut if they're found to be growing over a fence or property line. PHOTO MIKE WAKEFIELD

Here's the scenario: Neighbour 1 says, "That's my tree and you can't prune it."

Neighbour 2 replies, "But your tree's branches are hanging over the fence and restricting the use of my yard."

Sound familiar? The legalities of who owns the tree and who can prune the tree are often confusing for homeowners. So to help everyone clarify some legalities related to gardening, I interviewed lawyer John Whyte, of Lakes, Whyte LLP in North Vancouver, to provide his perspective. Whyte, along with articling student Emmanuel Fung, provided me with the following opinions.

### ***Case No. 1: If a tree on property A falls and damages neighbouring property B, who is liable for the damage?***

Although not common, this does happen.

"Under the law of nuisance, a property owner who knows or should know that a tree on their property poses a hazard to a neighbouring property has a duty to do what is reasonable to prevent or minimize the hazard. A failure to discharge this duty could lead to liability on the part of the property owner who owed the duty (the tree)," said Whyte.

There are mitigating factors in such a case. A tree in the middle of a forest is less likely to pose the same hazard as a tree sitting next to the neighbour's house.

"A tree that a property owner knows or should know to be decaying is more likely to require corrective action from that property owner than a tree which is apparently sound," said Whyte.

### ***Case No. 2: If a neighbour's tree or hedge is growing over a fence or property line, does a person have the legal right to cut off the offending branches on their side?***

This is a very common problem across our region and usually such issues are politely solved. In some cases neighbours don't get along and the problem is not solved politely.

"Generally speaking, neighbours can prune the offending branches as long as they restrict themselves to trimming the branches which overhang their own property, and remain on their side of the property line while they do so. They would not have the legal right to cross the property line, or to cut branches over the property line, without their neighbour's permission to do so," said Whyte.

So now you know you can prune off those branches but homeowners should not, "Prune to the property line in a manner which damages a tree that straddles the property line and makes the tree unstable or hazardous," he said.

**Case No. 3: Do municipal laws in Metro Vancouver prohibit or restrict the growing of vegetables in front yards?**

I asked this question because there are cities across North America where growing veggies in front yards is not legally permitted.

"None of the North Shore municipalities has a bylaw which specifically prohibits the planting of vegetables in one's front yard," said Whyte.

That's good to know, however Whyte offered a clarification.

"Municipalities might have concerns about the planting of vegetables in front yards related to the breach of zoning regulations or to unsightly vegetable patches," he said.

"Small-scale, welltended and non-commercial veggie gardens would not be a reason to attempt enforcement," he added.

I also asked Whyte to comment on any other landscaping issues that require a better understanding by the general public.

"On the North Shore, the number one legal issue that I would relate to gardening arises whenever a property owner, or a contractor retained by a property owner, trims or cuts down trees on a neighbouring property without the permission of the owner of that property," he said.

The property may be another resident's or it may be forested municipal land.

Private property rights in Canada are well established.

"To enter another's property without permission, whether or not one cuts down or trims the trees there, is to commit a trespass. To enter another's property without permission and cut down the trees there is to commit a serious trespass," said Whyte.

We have seen such cases on the North Shore in the past.

"Our courts often show little sympathy for this sort of trespasser. They have been known to award damages to compensate the owner of the damaged property for the costs of cleaning up the resulting mess and replacing the damaged trees, the timber value of the trees themselves, and not infrequently punitive damages to denounce this sort of unlawful activity," said Whyte.

One final note of legal advice: Get permission in writing to enter someone's property to prune or remove trees and include any limits to the work.

"That way there is less scope for a dispute after the tree pruning or removal has been done," said Whyte.

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