

*IN THE MATTER OF AN APPEAL OF THE CORPORATION OF THE CITY OF THUNDER  
BAY PROPERTY STANDARDS ORDER OCCURRENCE # EF: 25-501648*

**B E T W E E N:**

**KIE SHIROMA, IN HER CAPACITY AS ESTATE TRUSTEE FOR THE ESTATE OF  
NORIKO SHIROMA**

**Appellant**

**-and-**

**THE CORPORATION OF THE CITY OF THUNDER BAY**

**Respondent**

**FACTUM OF THE APPELLANT**  
**RE: PROPERTY STANDARDS ORDER OCCURRENCE # EF: 25-501648**

**PART I – OVERVIEW**

1. This is an Appeal brought by Kie Shiroma (“Kie” or “the Appellant”) in her capacity as Estate Trustee for Noriko Shiroma, appealing Property Standards Order with Occurrence # EF: 25-501648 (“the Order”).
2. The Appellant seeks revocation of the Order on the basis that neither she, in her capacity as Estate Trustee, nor 339 Rupert Street, Thunder Bay, Ontario (“the Property” or “339”), bear responsibility for addressing the deficiencies described in the Order.
3. The Appellant maintains that the neighbouring property, 335 Rupert Street (“the Neighbouring Property” or “335”), and its owners bear full responsibility for repairing the retaining wall described in the Order.

**PART II – SUMMARY OF FACTS**

4. Kie is the child of Noriko Shiroma, who owned 339 Rupert Street from 2016 until her death in 2024.
5. Since her mother passed in 2024, Kie has held the Property in trust as her late mother's Estate Trustee.
6. The Property is immediately to the south of 335 Rupert Street.
7. The Property was built in 1953 while 335 was built many years later, likely between 1979 and 1980.
8. The retaining wall described in the Order lies between the two properties and prevents the Neighbouring Property from collapsing into 339, as well as supporting the neighbouring driveway and backyard. The retaining wall wraps around the back of the Neighbouring Property for approximately 3 feet.
9. The retaining wall is similar in appearance to a smaller retaining wall between 335 and its neighbouring property, 333 Rupert Street.
10. Over time, the retaining wall that is the subject of the Order has leaned toward 339 to the extent that the City of Thunder Bay has now deemed it a hazard.
11. No records have been recovered from the City of Thunder Bay Building Department that confirm when the retaining wall was built nor which side of the property line the wall was built on.
12. Kie has maintained that she believes the wall was originally built when the Neighbouring Property was built, exists for the sole benefit of that property, and that the Neighbouring Property has caused the wall to lean.

**Reference: Affidavit of Kie Shiroma.**

**PART III – STATEMENT OF DETERMINATIVE ISSUES**

13. To determine whether the Order should be rescinded the Committee need only consider two main issues. Those issues are the following:

*A. Is the Appellant responsible for maintenance of the retaining wall?*

*i) Does the wall exist for the exclusive benefit of the Neighbouring Property?*

*ii) Has the retaining wall trespassed onto 339's property?*

*B. In light of the foregoing, should the Order be rescinded?*

**PART IV – LAW AND ARGUMENT**

*A. Is the Appellant Responsible for Maintenance of the Retaining Wall?*

*i) Does the retaining wall exist for the exclusive benefit of the Neighbouring Property?*

14. In cases where the original ownership of a structure cannot be determined, courts have looked at factors such as which property benefits from the structure to determine who bears responsibility for maintenance.

**Reference: *Caicedo v O'Neil*, 2024 ONSC 940 at 20-27.**

15. In *Caicedo*, the owner of a property that was subject to a Property Standards Order made an application seeking contribution from a neighbouring property owner for the cost of replacing a partially collapsed retaining wall.

16. The Ontario Superior Court of Justice found that there was no legal or equitable justification for ordering the neighbouring property to contribute to the cost of repairing the wall.
17. In coming to its decision, the Court found that the exact location of the wall in relation to the property line had no bearing on which property was responsible for maintaining the wall. Instead, because the wall was on both sides of the property line, the Court looked to which property benefited from the existence of the wall.

**Reference: *Caicedo v O'Neil*, 2024 ONSC 940 at 23-27.**

18. The Court held that “a property owner has a right to be free from danger posed by a neighbour’s collapsing property, and being secure from such danger is not properly characterized as a benefit.”

**Reference: *Caicedo v O'Neil*, 2024 ONSC 940 at 24.**

19. Similarly, in this case, the purpose of the retaining wall is to hold up the neighbouring driveway and property more generally. The only effect of the wall on 339 is to prevent soil and water from running onto the property, which is not properly a benefit but is a legal right.
20. Requiring Kie to share the costs of repairing a wall that her property does not benefit from, but which merely allows her Property to be free from infringement of its legal right would be inequitable.

ii) *Has the retaining wall trespassed onto 339’s property?*

21. The Appellant submits that the retaining wall was originally built on 335's side of the property line or was placed partially on 339's property without permission. The evidence supporting this conclusion is the following:

- i) The wall is similar in appearance to a smaller wall at the front of 335's property;
- ii) There would be no purpose for the wall to exist prior to 1980 when the neighbouring property was constructed because the wall currently "holds up" the neighbouring property and driveway; and
- iii) the wall wraps around the back of the neighbouring property.

**Reference: Affidavit of Kie Shiroma.**

22. The neighbour's use of their driveway and property has caused the wall to lean and shift further toward 339 over the years to the extent that the wall is now partially on 339's property.

**Reference: Affidavit of Kie Shiroma.**

23. If the wall was placed on the 339 side of the property line by accident or has migrated over the property line, then the retaining wall has trespassed onto 339's property and the Appellant bears no responsibility for maintaining the wall.

24. Trespass has been defined as "the act of entering upon land, in the possession of another, or placing or throwing or erecting some material object thereon without the legal right to do so."

**Reference: Mann v Saulnier (1959), 19 DLR (2<sup>nd</sup>) 130 (NBSC) at 132.**

25. There are three required elements of the trespass:
- i) The intrusion onto the land must be direct;
  - ii) The interference with land must be intentional or negligent; and
  - iii) The defendant's interference with the land must be physical.

**Reference: *Peter Ballantyne Cree Nation v Canada (Attorney General)*, 2016 SKCA at 131.**

26. In this case, the retaining wall has physically and directly crossed the property line because of the intentional actions of the neighbouring owners and their predecessors in using their driveway and shovelling snow against the wall.
27. In *Bellini Custom Cabinetry Ltd v. Delight Textiles Ltd.*, 2005 OJ No 3687, the Ontario Superior Court of Justice confirmed that similar facts constituted trespass.
28. In *Bellini*, the parties owned adjoining properties with a retaining wall between them that had encroached across the property line progressively over several years.
29. The Court found that the neighbouring property, by parking cars near the retaining wall had intentionally and directly caused the wall to trespass on the subject property.

**Reference: *Bellini Custom Cabinetry Ltd. v. Delight Textiles Ltd.*, 2005 OJ No 3687 at 119.**

30. In this case, the facts are similar because the retaining wall has moved across the property line onto 339's property because of the neighbour's actions and property.
31. Where there is a trespass, the obligation lies on the trespassing property to address the trespass rather than the wronged property.
32. It would be inequitable to order Kie to repair a retaining wall trespassing on her property.

*B. In light of the foregoing, should the Order be rescinded?*

33. Considering the foregoing, maintaining the Order against the Property would be unfair and contrary to the law.
34. Kie's property does not benefit from the wall, save by having the wall to protect against the collapse of the Neighbouring Property, a legal right rather than a benefit. If the City upholds the Order, it will effectively require Kie to pay to maintain her property's legal right.
35. Furthermore, there is persuasive evidence that the wall has ended up on the property through the actions of the current and former owners of 335. Again, if the City upholds the Order, it will allow 335 to benefit from its own wrongdoing.
36. Therefore, the Appellant asks that the Order be rescinded.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of July, 2025.

  
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