



Refer to File No.: 20/111

email: mbaker@bakerlawyers.com

March 18, 2021

Property Standards Committee, Toronto and East York Panel, City Clerk's Office
City Hall, 2nd Floor
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs and/or Madams,

RE: Retaining Wall Property Standards Order, Folder #: 20 171908 PRS 00 IV,
54 Rivercrest Road, Plan 2714 Lot 41 Pt Lot 42 ("54");

AND RE: Application for a Motion to the Property Standards Committee to Rescind
the Property Standards Order dated July 24, 2020.

We represent Mr. Paul Dallas, the Appellant, in the Property Standard Committee Panel hearing scheduled at 9:30 A.M. on Monday, March 22nd, 2021.

On February 22nd, 2021, the Property Standards Committee, Toronto and East York Panel (the "Panel") deferred consideration of the Order to Comply, dated July 24, 2020, for 54 Rivercrest Road, Folder No. 20 171908 PRS 00 IV. As part of this decision to defer consideration, the Panel "directed the Appellant to have the property line staked, and to provide evidence of the property line, submitted at least one week in advance of the March 22, 2021 meeting."

As directed, the Appellant staked the property line and provided photographic evidence of the staking of the property line, which we submitted on his behalf one week in advance of the March 22, 2021 meeting.

Pursuant to *Section 15.3(3.1(1) of the Building Code Act, 1992* and *Section 21.2(1) of the Statutory Powers Procedure Act, 1990*, this is an application for a Motion to the Property Standards Committee Panel to rescind or defer the Property Standards Order dated July 24th, 2020 (the "Order to Comply"). The Order requires the owner of 54 to repair or replace

a retaining wall (the “Wall”) which lies between the rear yards of 54 to the east and 67 and 69 Riverview Gardens (“67 and 69”) to the east.

Prior to the issuing of the Order, the owner of 54 Rivercrest Road put the owners of 67 and 69 Riverview Gardens (“67” and “69”) on notice that ownership of the property, on which the Wall sits and the responsibility to maintain it, was in dispute. Consequently, the property rights, the boundary line and the common law maintenance obligation must first be adjudicated in a Court of competent jurisdiction, the Ontario Superior Court of Justice, before the Property Standards Committee can make a determination of repair or maintenance obligations under *Section 15.2(2) of the Building Code Act, 1992*. Respectfully, the Property Standard Committee does not have the jurisdiction to adjudicate the property rights, the property boundaries and determine the maintenance obligations in dispute in this matter.

In the alternative, we make an application for a Motion pursuant to *Sections 16.1(1) and 21.2(1) of the Statutory Powers Procedure Act, 1990* for the immediate suspension of the Order until such time as a Court of competent jurisdiction has resolved the property rights, the maintenance obligations and the location of the boundary line.

Facts

We refer you to the Background section of our Letter to the Property Standards Committee dated February 19, 2021 for the relevant background facts. A copy of the letter is attached as Exhibit ‘A’.

Reasons for Rescinding or Deferring the Order

1. The Appellant has commenced an action in the Ontario Superior Court of Justice for the aforementioned adjudication of the property rights, the boundary line, and the common law maintenance obligation by a Court of competent jurisdiction.

- 1.1 The Appellant has retained Paliare Roland Rosenberg Rothstein LLP (“Paliare Roland”) for this action.

- 1.2 A Notice of Application was submitted for filing by Mr. Andrew Lokan, of Paliare Roland, on behalf of the Appellant to the Ontario Superior Court of Justice on March 16th, 2021. A copy of this Notice of Application is attached as Exhibit ‘B’.

- 1.3 The owners of 67 and 69 Riverview Gardens are in the process of being, or have already been, provided with copies of the Notice of Application.

2. **The Duty of Procedural Fairness.**

- 2.1 The Supreme Court of Canada extended the rules of natural justice to administrative decisions.¹ As a result, administrative bodies and decisions-makers and their

¹ *Nicholson v. Haldimand-Norfolk Regional Police Commissioners*, [1979] 1 S.C.R. 311.

procedures and decisions attract a general common law duty of fairness.² This was further clarified by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*³ to establish underlying values and factors for when administrative bodies and decision-makers and their procedures and decisions attract this duty.

2.2 An administrative decision-maker must be mindful of its duty of procedural fairness. “The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.”⁴

2.3 Given the background facts in Exhibit ‘A’, the Panel and the Property Standards Order are not the appropriate statutory or institutional context in which the Appellant’s rights and interests may be affected and determined. The Panel does not provide the Appellant with the context to present their case fully and fairly as the Panel cannot adjudicate the rights and common law obligations in dispute. The proper context is the Ontario Superior Court of Justice.

2.4 Furthermore, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*⁵ reiterated the non-exhaustive list of *Baker* “factors that inform the content of the duty of procedural fairness in a particular case”: “(1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself.”⁶

2.5 The evidence used by the Municipal Standards Officer to make a determination as against which property and owner to issue the Order has not been disclosed to the Appellant. It remains unclear on what evidentiary basis this determination for the Order was made.

2.6 The Appellant has a legitimate expectation that the Panel will recognize and defer to the jurisdiction of the Ontario Superior Court of Justice in adjudicating the property rights and common law obligations which may be affected and determined in this dispute.

2.7 The scope and cost of the work that would be incurred by the Appellant are life-changing. The estimated cost to repair the Wall is Two Hundred Thousand Dollars

² *Ibid* at page 324.

³ 1999 CanLII 699 (SCC).

⁴ *Ibid* at paragraph 28.

⁵ 2019 SCC 65 (CanLII).

⁶ *Vavilov*, at paragraph 77; *Baker*, at paragraphs 23 – 27.

(\$200,000.00) (Exhibit 'A'), more or less. Consequently, the Panel must consider the importance of the Order and its decision to the Appellant. It would be a dereliction of the Panel's duty of procedural fairness to ignore the importance and confirm the Order prior to the adjudication of the rights of property owners and the location of the property boundary.

2.8 The Panel is not limited in its choice of decisions and can choose to issue a decision that accords, under the circumstances, with its duty of procedural fairness. It can rescind, defer, or suspend the Order until the Appellant's rights and obligations have been adjudicated by the Ontario Superior Court of Justice.

2.9 The Appellant has taken the necessary steps to commence an action to have the boundary of the property, as well as the common law obligations of the owners of 67 and 69, lawfully adjudicated by the Ontario Superior Court of Justice, a Court of competent jurisdiction. These issues cannot be properly determined by the Property Standards Committee as to do so would be adjudicating property rights and common law obligations which it does not have the jurisdiction to adjudicate. Adjudication of such a dispute properly belongs in the Ontario Superior Court of Justice.

3. Panel Decision and Order Requested

3.1 We make application to the Property Standards Committee for an Order pursuant to *Section 15.3(3.1(1) of the Building Code Act, 1992* and *Section 21.2(1) of the Statutory Powers Procedure Act, 1990*, which:

- (i) Rescinds the Property Standards Order dated July 24th, 2020; and
- (ii) Adjourns the hearing of the Panel until such time as the property line is settled and the rights and obligations of the owners of the property adjacent to the Wall have been adjudicated by a Court of law.

3.2 In the alternative, we ask the Property Standards Committee for an Order pursuant to *Sections 16.1(1) and 21.2(1) of the Statutory Powers Procedure Act, 1990*, which:

- (i) Suspends the operation of the Order dated July 24th, 2020 until such time as the property line is settled and the rights or obligations of the owners of the property adjacent to the Wall have been adjudicated by a Court of law.

Yours very truly,

BAKER & COMPANY

PER: 

Mark G. Baker, LL.M., C.S.

MGB:ps

EXHIBIT 'A'



Refer to File No.: 20/111

Mark G. Baker. LL.M., C.S.: Ext. 221
Edna Thlagarajah (Law Clerk): Ext. 243
Email: mbaker@bakerlawyers.com

February 19, 2021

Property Standards Committee, Toronto and East York Panel, City Clerk's Office
City Hall, 2nd Floor
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs and/or Madams,

RE: Retaining Wall Property Standards Order, Folder #: 20 171908 PRS 00 IV, 54 Rivercrest Road, Plan 2714 Lot 41 Pt Lot 42 ("54");

AND RE: Motion before the Property Standards Committee for an Order to Rescind the Property Standards Order dated July 24, 2020.

We represent Mr. Paul Dallas, the Appellant, in the Property Standard Committee Panel hearing scheduled at 9:30 A.M. on Monday, February 22nd, 2021.

Pursuant to *Section 15.3(3.1(1) of the Building Code Act, 1992* and *Section 21.2(1) of the Statutory Powers Procedure Act, 1990*, this is a Motion before the Property Standards Committee Panel to rescind the Property Standards Order dated July 24th, 2020 (the "Order"). July 24, 2020 Property Standards requires the owner of 54 to repair or replace a retaining wall (the "Wall") which lies between the rear yards of 54 to the east and 67 and 69 Riverview Gardens ("67 and 69") to the east.

BACKGROUND

By way of background, this matter began when the owners of 67 and 69 approached the owners of 54 with letters requiring the owners of 54 to repair the Wall estimated to have a cost of Two

Suite 3300, 130 Adelaide Street West, Toronto, Canada M5H 3P5
Tel: (416) 777 0100 Fax: (416) 366 3992

Hundred Thousand (\$200,000) Dollars, more or less. After seeking legal advice, the owners of 54 responded to the owners of 67 and 69 that the Wall only provided utility to 67 and 69 and was of no benefit to 54. Further, the owners of 54 disputed that the Wall was situate on the 54 lands and disputed that they had any lawful obligation to maintain the Wall. Rather than engaging in further discussions, the owners of 67 and 69 called on the City of Toronto Property Standards Office and requested that a Property Standards Officer attend at the site and to issue a Property Standards Order against the owners of 54. The Property Standards Officer was shown surveys of 67 and 69 which depicted the Wall being outside of their original property boundaries and based on those surveys issued the Property Standards Order dated July 24, 2020.

In effect, what began as a civil dispute between private property owners turned into a municipal Property Standards Order which was issued without regard to the legal equities that exist between the disputing neighbours and which burdens the owners of 54 with an immediate requirement to expend Two Hundred Thousand (\$200,000) Dollars to rebuild the Wall. The owners of 67 and 69, by inveigling the Property Standards Office to become involved in a civil property dispute, hoped to short circuit and avoid any determination, at law, that they would be found to be totally responsible for the care and maintenance of the Wall. Under circumstances where the Property Standards Officer was apparently unaware of the ongoing civil dispute and unaware of the statutory and common law applicable to the determination of responsibility, it would be improper to allow the existing Property Standards Order to subsist.

Our Motion to this Committee is for an Order rescinding the Property Standards Order dated July 24, 2020 so as to allow the owners of 54 to bring an Application before the Ontario Superior Court of Justice for a determination that the ownership of the lands upon which the Wall sits (the "Disputed Land") is now lawfully the property of the owners of 67 and 69 and for a determination that the owners of 67 and 69 have a common law duty to maintain the integrity of the Wall.

In support of this Motion, the Appellant states as follows:

1. Grounds in Dispute

1.1 As per our letter to Property Standards Committee dated August 11, 2020, the weight of evidence shows that the Wall provides no benefit to 54. The Wall was either erected by the subdivision developer or the previous owners of 67 and 69 Gardens as a method of deepening and levelling those respective lots. The Wall was an encroachment on the land of 54. In light of this, the Appellant submits to the Committee the following two contradictions to the assertion that the owner of 54 is the owner of the Disputed Land and therefore responsible for the maintenance of the Wall. These contradictions make clear the dispute which can only be settled by a Court of competent jurisdiction.

(i) The Ontario *Real Property Limitations Act, 1990* and the location of the property boundary.

1.2 As the Wall has encroached on the land of 54 for over eighty (80) years, it has existed for enough time that it can no longer be said that the Disputed Land still belongs to the owners of 54. This is because under Section 4 of the Ontario *Real Property Limitations Act, 1990* (the "RPLA"), all right, title and interest of lands from which the original

owner has been excluded for more than ten (10) years, is extinguished. In other words, by virtue of the Wall encroaching on 54 for some eighty (80) or more years, the owners of 54 have unknowingly been excluded from the Disputed Land, believing the property boundary to be located east of the Wall rather than west of the Wall as indicated on the survey in evidence. Despite holding paper title to the Disputed Land, all of the right, title and interest of the owners of 54 in the Disputed Land were extinguished long ago, which leaves the owners of 67 and 69 as holders of all of the right, title and interest in the Disputed Land.

- 1.3 As this encroachment has existed for decades, no survey undertaken during this period can be considered determinative of the location of the property boundary, particularly where a dispute arises as to the location of the boundary line, as it has in this case. While surveys are useful evidence for locating boundary lines, only a Court may direct, order, and sanction the final and conclusive location of a disputed property boundary line.

(ii) Common Law Obligation of Support.

- 1.4 Common law jurisprudence has established that by removing a portion of the slope behind 54 to create the Wall, the 67 and 69 owners owe a duty to 54 to maintain the stability of 54's slope and therefore the Wall. According to the decision in *Cleland v. Berberick*¹, an owner of land is entitled to have his land left in its "natural plight" and condition without interference by the direct or indirect action of nature caused by the direct action of the owner of adjoining land. Similarly, the Ontario Court of Appeal in *Boyd v. Toronto (City)*² stated: "[a] landowner has a right, independent of prescription, to the lateral support of the neighbouring land owned by another, so far as that is necessary to uphold the soil in its natural state at its normal level..." A landowner must not use their land in such a way as to remove the natural support of adjoining land and thus interfere with, or prevent, their neighbour's right to enjoy his own land in its natural state.
- 1.5 By removing the natural slope in order to flatten and deepen the rear yards of 67 and 69, the predecessors in title of 67 and 69 acquired a common law obligation of support owed to the owners of 54. The predecessors in title of 67 and 69, by the removal of the bottom of the slope and therefore the natural support of 54's slope, and by replacing the natural slope with the Wall, acquired an obligation to maintain the Wall and to support the slope of 54.
- 1.6 By issuing the Property Standards Order pursuant to *Subsection 15.2(2) of the Building Code Act, 1992* to assign responsibility for repair of the Wall before a Court can make a determination as to this common law obligation, the Property Standard Committee is dictating the property boundary and rights of the owner of 54, which is rightfully within jurisdiction of a Court of law.

¹ (1915) 34 O.L.R. 636, 25 D.L.R. 583 (H.C.)

² (1911), 23 O.L.R. 421 at 423.

2. No Immediate Harm

2.1 In anticipation of an argument by the owners of 67 and 69 that the Wall presents a dangerous situation requiring immediate action, the Appellant has had the slope and Wall inspected by a structural engineer who provided a conclusion that the slope has been stabilized by the root system of the forest and that the condition of the Wall has remained unchanged for a lengthy period of time. The Wall, therefore, presents no immediate hazard to property or people.

2.2 As the Property Standards Order dated July 24th, 2020 was issued under *Subsection 15.2(2) of the Building Code Act, 1992* instead of *Subsection 15.7(1) – Emergency order re dangerous non-conformity with standards*, the bylaw enforcement officer who inspected the Wall likely agrees that there is no immediate danger to the health or safety of any person or property.

2.3 Therefore, there is time for this dispute to be properly adjudicated by a Court of law.

2.4 The Appellant has elected to have the boundary of the property, as well as the common law obligations of the owners of 67 and 69, lawfully adjudicated by the Ontario Superior Court of Justice. These issues cannot be properly determined by the Property Standards Committee which does not have the jurisdiction to adjudicate this dispute.

2.5 We make application to the Property Standards Committee for an Order pursuant to *Section 15.3(3.1(1) of the Building Code Act, 1992* and *Section 21.2(1) of the Statutory Powers Procedure Act, 1990*, which:

- (i) Rescinds the Property Standards Order dated July 24th, 2020; and
- (ii) Adjourns the hearing of this appeal until such time as the property line is settled and the rights and obligations of the owners of the Disputed Land have been adjudicated or settled.

2.6 In the alternative, we ask the Property Standards Committee for an Order pursuant to *Sections 16.1(1) and 21.2(1) of the Statutory Powers Procedure Act, 1990*, which:

- (i) Suspends the operation of the Order dated July 24th, 2020 until such time as the property line is settled and the rights or obligations of the owners of Disputed Land have been adjudicated by a Court of law or settled.

Yours very truly,
BAKER & COMPANY

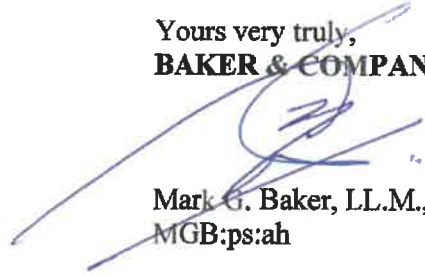

Mark G. Baker, LL.M., C.S.
MGB:ps:ah

EXHIBIT 'B'

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PAUL DALLAS

Applicant

- and -



Respondents

Application under Rule 14.05 of the Ontario *Rules of Civil Procedure* and

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be fixed by the registrar, at 10:00 a.m., at 361 University Avenue, Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____

Issued by _____

Local Registrar

Address of
court office: 330 University Avenue, 8th Floor
Toronto ON M5G 1E6

TO: xx

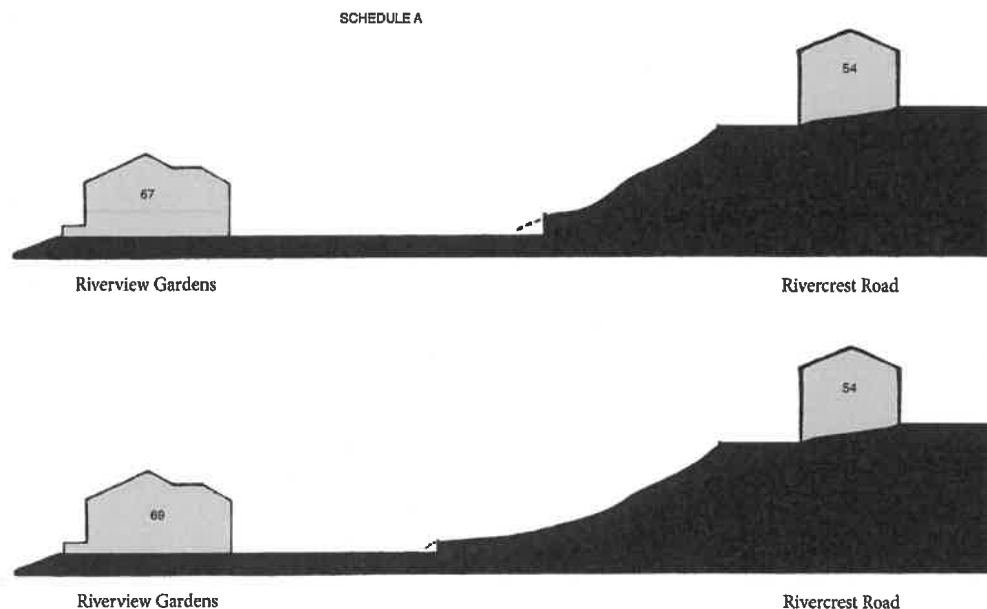
AND TO: xx

APPLICATION

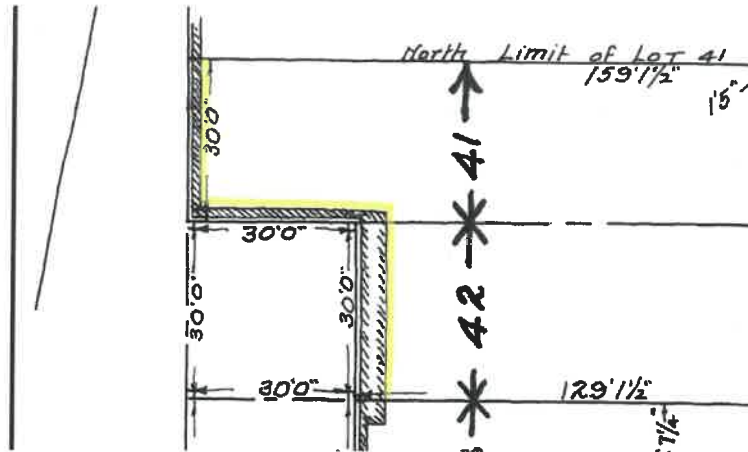
1. The Applicant makes application for:
 - (a) a declaration that the wall between the properties known municipally as 54 Rivercrest Road (owned by the Applicant) and 67 and 69 Riverview Gardens (owned by the Respondents) (the "Wall"), is on land owned and/or occupied by the Respondents;
 - (b) a declaration that the Applicant has no right, title or interest in the land on which the Wall stands;
 - (c) an order that the register under the *Land Titles Act* be rectified, if required, to show that the Respondents own the land on which the Wall stands;
 - (d) a declaration that the Applicant is not responsible for the maintenance or repair of the Wall under the City of Toronto's Property Standards Bylaw (the "Bylaw");
 - (e) a declaration that in the event the Applicant is required to incur the cost of repairing the Wall under the Bylaw, the Respondents have been unjustly enriched by the cost of the repairs;
 - (f) an order that the Respondents reimburse the Applicant for the cost of the repairs, if incurred;
 - (g) costs of this application on a substantial indemnity basis; and
 - (h) such further and other relief as counsel may advise and this Honourable Court may accept.

2. The grounds for the application are:

- (a) The Applicant is the registered owner of property known municipally as 54 Rivercrest Road (the "Uphill Property"), where the Applicant has lived his whole life from his birth in 1959 to the present, except for 1 year;
- (b) The Respondent [REDACTED] is the registered owner of property known municipally as 67 Riverview Gardens, and the Respondents [REDACTED] are the registered owners of property known municipally as 69 Riverview Gardens (collectively, 67 and 69 Riverview Gardens are referred to herein as the "Downhill Properties");
- (c) The Uphill Property is a deep lot, which slopes significantly downhill towards its western edge, where it borders on the Downhill Properties. In its natural state, that slope continued along the eastern portion of the Downhill Properties, towards the Humber River, as represented below:



- (d) In or about 1931, the lots for both the Downhill Properties and the Uphill Property were laid out in a Plan of Subdivision of Parts of Registered Plans 2011, 2293, 2315, and 2705 in the Township of York, being Plan No. 2714 ("Plan of Subdivision");
- (e) On the Plan of Subdivision, Lots 34 (which became 67 Riverview Gardens) and 35 (which became 69 Riverview Gardens) front onto Riverview Gardens, while Lots 41 and 42 (which together later became 54 Rivercrest Road) front onto Rivercrest Road;
- (f) The western boundary of Lots 41 and 42 meets the eastern boundary of Lots 34 and 35;
- (g) In 1934, the Downhill Properties were conveyed to the predecessors in title of the Respondents. Sometime between 1934 and 1942, houses were constructed on the Downhill Properties;
- (h) In 1936, the western 30-foot portion of Lot 42 was transferred to the owner of Lot 34 immediately to the East, thereby increasing the size of 67 Riverview Gardens;
- (i) Sometime between 1936 and 1942, the predecessors in title to the Respondents caused the Wall to be built at the back of their gardens, running from North to South between Lots 35 and 41, then East for 30 feet along the southern boundary of Lot 41, then South along the boundary between the western 30 feet of Lot 42 (belonging to 67 Riverview Gardens) and the remainder of Lot 42 (belonging to 54 Rivercrest Road), around the boundary between the Downhill Properties and the Uphill Property, as set out in the sketch below:



- (j) The Uphill Property did not have a house built on it at the time, and the Wall provided and continues to provide no practical utility or benefit to the Uphill Property;
- (k) Rather, the Wall was constructed solely for the benefit of the owners of the Downhill Properties, to provide for a level garden all the way to the back of their properties, instead of the upward slope that previously affected the eastern portion of their properties in their natural state;
- (l) The Wall was not constructed on the exact boundary between the Downhill Properties and the Uphill Property. Rather, the builders of the Wall appear to have encroached slightly on the Uphill Property, thereby maximizing the size of their back gardens;
- (m) Prior to the construction of the Wall, when the land was in its natural state, the owners of the Downhill Property owed a duty at common law to the owner of the Uphill Property, to provide lateral support to the Uphill Property;
- (n) When the owners of the Downhill Properties caused the back portions of the Downhill Properties to be excavated to create a level back garden, they owed a duty to replace the lateral support to the Uphill Property that had been provided from their land in its natural state, with a properly-built

retaining wall, and to keep such wall in good repair so that it would continue to provide such lateral support to the Uphill Property;

- (o) The duty to provide lateral support with a properly-built retaining wall, and to maintain such wall in good repair, was not and is not negated by the fact that the owners of the Downhill Properties encroached upon the Uphill Property;
- (p) In or about 1944-45, the owner of the Uphill Property constructed a house on the Uphill Property. In 1946, the Uphill Property was transferred to the Applicant's maternal grandmother, Chrissa Kabakos. Ms. Kabakos and her family were the first occupants of the house, which has remained in the Applicant's family continuously since then;
- (q) At the time Ms. Kabakos and her family moved in, there was a fence at the back of the Uphill Property, just to the east of the Wall, marking the western edge of the land used and occupied by the Applicant's family;
- (r) From at least 1942 until the Downhill Properties and Uphill Property were brought under the *Land Titles Act* on or about October 19, 2001. the owners of the Downhill Properties were in open, continuous, notorious, and exclusive possession of the western portion of the Uphill Property up to and including the land on which the Wall was built, such that the doctrine of adverse possession applies to this portion of the Uphill Property;
- (s) In or about early 2020, the Respondents contacted the City of Toronto, seeking an order that the Applicant carry out repairs on the Wall to comply with the Bylaw ("Order to Comply"), which order was subsequently made on or about July 24, 2020;
- (t) The Applicant appealed the Order to Comply to the Property Standards Committee on August 11, 2020;

- (u) As of the date of this application, the Property Standards Committee has adjourned the appeal to allow the Applicant to make further inquiry;
- (v) The Property Standards Committee has no jurisdiction to determine matters of adverse possession, unjust enrichment, or to grant equitable relief;
- (w) A declaration that the Applicant has no right, title, or interest in the land at the western edge of the Uphill Property, up to and including the land under the Wall, and/or an order that the register be rectified to reflect that the Downhill Properties own such land, will reflect the actual boundary between the Downhill Properties and the Uphill Property as it has existed for approximately 80 years, and thereby do justice between the parties;
- (x) In the alternative, to the extent that the Applicant is required to incur the cost of repairing the Wall under the Order to Comply, the Respondents are unjustly enriched and should be required to reimburse the Applicant for such cost;
- (y) Sections 4 and 15 of the *Real Property Limitations Act* and sections 44, 51, 57(13), 159, and 160 of the *Land Titles Act*; and
- (z) Such further grounds as counsel may advise and this Honourable Court may accept.

3. The following documentary evidence will be used at the hearing of this Application:

- (a) Affidavits to be filed; and
- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: March 15, 2021

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

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Fax: 416.646.4301
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Lawyers for the Applicants

PAUL DALLAS
Applicant

-and-

Court File No.

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

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Lawyers for the Applicant