

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

IN THE MATTER of an Appeal pursuant to Section 49 of the *Surveys Act*, R.S.O. 1990, c. S. 30, as amended, of the Decision and Order dated October 24, 2013, of the Surveyor General of Ontario, in the proceeding described herein below.

IN THE MATTER of an application under Section 48 of the *Surveys Act*, R.S.O. 1990, Chapter S.30 by the Corporation of the Township of Tiny for a Municipal Resurvey of the Road Allowance between Concessions 18 and 19, across Lots 9, 10, 11 and 12 and Part of Lot 13, Geographic Township of Tiny, County of Simcoe.

AND IN THE MATTER of a Survey Report and Plan of Survey to re-establish and mark with permanent monuments, the Road Allowance between Concessions 18 and 19, across Lots 9, 10, 11 and 12 and Part of Lot 13, Township of Tiny, County of Simcoe by John Goltz, Ontario Land Surveyor, dated August 30, 2011.

B E T W E E N:

STEPHEN MORANIS and THE ESTATE OF SADIE MORANIS

Appellants

- and -

THE CORPORATION OF THE TOWNSHIP OF TINY

Respondent

NOTICE OF APPEAL

THE APPELLANTS, STEPHAN MORANIS and the ESTATE OF SADIE MORANIS,

APPEAL to the Divisional Court from the Order and Decision of Susan F. MacGregor, Surveyor

General, of the Ontario Office of the Surveyor General, Case No. 883 dated October 24, 2013, made at the Township of Tiny in the County of Simcoe, Ontario, Canada.

THE APPELLANTS ASK that this Decision and Order be set aside and an Order be granted as follows:

1. an Order requiring the Respondent, The Corporation of the Township of Tiny (hereinafter referred to as "Tiny Township" or the "Township") to comply with the Order of Honourable Madam Justice Allen dated July 5, 2010, Court File No. CV-09-386834;
2. an Order declaring the Decision and Order dated October 24, 2013, to be void for lack of jurisdiction and in contempt of the Order of Madam Justice Allen dated July 5, 2010;
3. an Order requiring the Township to commence a *Boundaries Act* application in accordance to the July 5, 2010 Order of Justice Allen;
4. in the alternative, a new hearing pursuant to the Surveys Act be Ordered, before a differently constituted panel, with such directions as this Honourable Court deems just;
5. in the alternative, that the Office of the Surveyor General be directed to vary its Judgment, or that this Honourable Court issues an Order, that the position of the road allowance be amended in accordance to a) the Plan of Survey of Ronald J. Stewart, Ontario Land Surveyor, dated August 27, 2012, and b) the Appellants

submissions, in the proceedings below, in reference to the property owned by the Appellants herein;

6. in the alternative, that the Office of the Surveyor General be directed to vary its Decision and Order, or this Honourable Court varies the decision and judgment in a manner that deals with the Appellant's property interests in a just, fair and equitable manner;
7. costs of this Appeal on a substantial indemnity basis and costs for the proceedings below; and
8. such other Order as counsel may advise or as this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

1. The Surveyor General of Ontario acted in breach of a Court Order of the Honourable Justice Allen dated July 5, 2010, ignoring an Order requiring a *Boundaries Act* proceeding and choosing to proceed under the *Surveys Act*.
2. The breach of the Court Order was also a breach of an Agreement the Township had entered into with the Appellant in the Action from which Justice Allen's Order dated July 5, 2010 was issued.
3. There are significant gaps in the decision under appeal in which there is no explanation for apparently rejecting the Appellants submissions on facts and law, or even how they were considered or analyzed in arriving at a final decision. The final decision now under appeal contradicts, without explanation, the Appellant's evidence and submissions. Pursuant to the fundamental principle stated by the

Supreme Court of Canada in *R. v. Sheppard*, "an adequate explanation for the trial judge's conclusions is generally necessary for three reasons: (1) to satisfy a judge's obligation to explain his or her decision so that members of the public can be satisfied that justice has been done; (2) to explain to the losing party why he or she has lost; and (3) to facilitate appellate review".

4. Such other grounds as counsel may advise and this Honourable Court deem just.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. *Surveys Act* s. 49;
2. *Rule of Civil Procedure*;
3. *Courts of Justice Act*;
4. This Appeal is of a final order;
5. Leave To Appeal is not required.

THE APPELLANT requests that this appeal be heard at the Divisional Court for the County of Simcoe, 50 Eagle Street West, Newmarket, Ontario

November 25, 2013

Kirkor A. Apel (LSUC.# 37724A)

Barrister and Solicitor

101- 1440 Don Mills Road

Toronto, Ontario M3B 3M1

Tel: 416-386-1975

Fax: 416-386-9807

Solicitor for the Appellant,

Stephen Moranis and Estate of Sadie Moranis

5

TO: THE MINISTER OF NATURAL RESOURCES

Whitney Block, 6th Floor

99 Wellesley St. W.

Toronto, Ont. M7A 1W3

Tel: 416-314-2301

Fax: 416-325-1564

AND TO: SUSAN F. MACGREGOR

Surveyor General for Ontario

Ministry of Natural Resources

300 Water Street, 2nd Floor North

Peterborough, ON K9J 8M5

Tel: 705-755-2128

Fax: 705-755-2149

AND TO: JOHN BARZO

Barrister and Solicitor

60 Collier Street, Suite 205

Barrie, Ont. L4M 1G8

Tel: 705-733-6245

Fax: 705-730-0009

Solicitor for the Respondent, The Corporation of the Township of Tiny

STEPHEN MORANIS AND THE ESTATE OF SADIE MORANIS

AND

THE CORPORATION OF THE TOWNSHIP OF TINY

Court File No.

ONTARIO

**SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

Proceeding commenced at Newmarket

NOTICE OF APPEAL

Kirkor A. Apel (LSUC.# 37724A)

Barrister and Solicitor

101- 1440 Don Mills Road

Toronto, Ontario M3B 3M1

Tel: 416-386-1975

Fax: 416-386-9807

Solicitor for the Appellant, Stephen Moranis and Estate of Sadie Moranis

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

IN THE MATTER of an Appeal pursuant to Section 49 of the *Surveys Act*, R.S.O. 1990, c. S. 30, as amended, of the Decision and Order dated October 24, 2013, of the Surveyor General of Ontario, in the proceeding described herein below.

IN THE MATTER of an application under Section 48 of the *Surveys Act*, R.S.O. 1990, Chapter S.30 by the Corporation of the Township of Tiny for a Municipal Resurvey of the Road Allowance between Concessions 18 and 19, across Lots 9, 10, 11 and 12 and Part of Lot 13, Geographic Township of Tiny, County of Simcoe.

AND IN THE MATTER of a Survey Report and Plan of Survey to re-establish and mark with permanent monuments, the Road Allowance between Concessions 18 and 19, across Lots 9, 10, 11 and 12 and Part of Lot 13, Township of Tiny, County of Simcoe by John Goltz, Ontario Land Surveyor, dated August 30, 2011.

BETWEEN:

STEPHEN MORANIS and THE ESTATE OF SADIE MORANIS

Appellants

- and -

THE CORPORATION OF THE TOWNSHIP OF TINY

Respondent

APPELLANT'S CERTIFICATE

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. All Exhibits, listed as Exhibits numbers A – V.

2

2. The oral evidence of all persons giving testimony at the hearing, including transcripts;
3. Such further evidence that this Honourable Court deems just.

November 25, 2013

Kirkor A. Apel (LSUC.# 37724A)

Barrister and Solicitor

101- 1440 Don Mills Road

Toronto, Ontario M3B 3M1

Tel: 416-386-1975

Fax: 416-386-9807

**Solicitor for the Appellant, Stephen Moranis
and the Estate of Stephen Moranis**

TO: THE MINISTER OF NATURAL RESOURCES

Whitney Block, 6th Floor

99 Wellesley St. W.

Toronto, Ont. M7A 1W3

Tel: 416-314-2301

Fax: 416-325-1564

AND TO: SUSAN F. MACGREGOR

Surveyor General for Ontario

Ministry of Natural Resources

300 Water Street, 2nd Floor North

Peterborough, ON K9J 8M5

Tel: 705-755-2128

Fax: 705-755-2149

AND TO: JOHN BARZO

Barrister and Solicitor

60 Collier Street, Suite 205

Barrie, Ont. L4M 1G8

Tel: 705-733-6245

Fax: 705-730-0009

Solicitor for the Respondent, The Corporation of the Township of Tiny

STEPHEN MORANIS AND THE ESTATE OF SADIE MORANIS

AND

THE CORPORATION OF THE TOWNSHIP OF TINY

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Proceeding commenced at Newmarket

APPELLANT'S CERTIFICATE

Kirkor A. Apel (LSUC.# 37724A)

Barrister and Solicitor

101- 1440 Don Mills Road

Toronto, Ontario M3B 3M1

Tel: 416-386-1975

Fax: 416-386-9807

Solicitor for the Appellant, Stephen Moranis and Estate of Sadie Moranis

IN THE MATTER of an application under Section 48 of the *Surveys Act*, R.S.O. 1990, Chapter S.30 by the Corporation of the Township of Tiny for a Municipal Resurvey of the Road Allowance between Concessions 18 and 19, across Lots 9, 10, 11 and 12 and Part of Lot 13, Geographic Township of Tiny, County of Simcoe.

AND IN THE MATTER of a Survey Report and Plan of Survey to re-establish and mark with permanent monuments, the Road Allowance between Concessions 18 and 19, across Lots 9, 10, 11 and 12 and Part of Lot 13, Township of Tiny, County of Simcoe by John Goltz, Ontario Land Surveyor, dated August 30, 2011.

NOTICE OF OBJECTION

TAKE NOTICE that Stephen Moranis and Lawrence Dale, on behalf of themselves and owners of properties described as PIN 58424-0071 (LT) and PIN 58424-0477 (LT) hereby object to the municipal re-survey conducted by John Goltz, O.L.S. pursuant to the *Surveys Act* for the following reasons:

1. The location of the road allowance between Concessions 18 and 19 in the Township of Tiny as retraced by John Goltz is respectfully submitted to be in error in that it appears to be a retracement of the road allowance between Concessions 18 and 19 surveyed in error by P. Burnet, P.L.S., in 1872. To the extent that Mr. Burnet did not "get it right", the re-survey and retracement of the road allowance in question as originally established and laid out by Mr. John Goessman is not perpetuated and correctly located by Mr. Goltz.
2. The retracement of the road allowance between Concessions 18 and 19 by Mr. Goltz, O.L.S. is respectfully submitted to be in error in that the straight line projection to the water's edge of Georgian Bay fails to take into account the fact that the water levels in Georgian Bay and Lake Huron have resulted in inundation and reliction (erosion and accretion), the effect of which is to cause the ownership of the road allowance in question to deflect at right angles to the bed of Georgian Bay in accordance with the equitable principles established in *Andriet v. Strathcona*, as well as other precedents which confirm this principle.
3. It is respectfully submitted that the retracement and municipal resurvey conducted by Mr. Goltz, O.L.S. fails to consider all available evidence and fails to apply proper legal principles with respect to the re-establishment and location of the road allowance between Concessions 18 and 19 for such further reasons, supported by such further evidence, and confirmed by such further principles as are set out in the Survey and Report prepared by R.J. Stewart, O.L.S. dated August 27, 2010 for purposes of an application made under the Boundaries Act, Ministry of Government Services File B-1219.

The objectors intend to rely on the following material:

1. The plan of survey by R.J. Stewart, O.L.S. dated August 27, 2010.

2. The Report and appendices written and prepared by R.J. Stewart, O.L.S. dated August 27, 2010.
3. The further sketches, diagrams, and calculations, materials, and further viva voce evidence to be adduced at the hearing before the Surveyor General by Mr. Stewart, O.L.S. who is anticipated to testify on behalf of the objectors in that regard.
4. Such further material as counsel may advise.

DATED at Guelph this 24th day of October, 2012.



Stephen Moranis, Objector and
Lawrence Dale, Objector, by their solicitor,
Izaak de Rijcke