

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Therens v. Piche*,  
2025 BCSC 2206

Date: 20251107  
Docket: S137312  
Registry: Kelowna

Between:

**Shannon Marie Therens**

Petitioner

And

**Robin Carmel Piche, Audrey Ann Piche and Louis Andrew Piche**

Respondents

Before: The Honourable Justice Hewson

## Reasons for Judgment

Counsel for the Petitioner:

C.K. Wendell

Appearing for the Respondents:

R. Piche

Place and Date of Trial/Hearing:

Kelowna, B.C.  
September 22, 2025

Place and Date of Judgment:

Kelowna, B.C.  
November 7, 2025

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**Introduction**

[1] This is a petition under section 36 of the *Property Law Act*, R.S.B.C. 1996, c. 377 seeking compensation for an encroachment.

[2] The petitioner is Shannon Marie Therens. The respondents are Robin Carmel Piche, Audrey Ann Piche and Louis Andre Piche. I will refer to the respondents as “the Piche family”.

**Background**

[3] Ms. Therens and the Piche family own adjacent properties on Oyama Road in Lake Country, BC. The Piche family constructed a driveway on an easement registered on the petitioner’s land. The construction of the driveway caused fill to be deposited on Ms. Therens’ property.

[4] In March 2013, Ms. Therens discovered the extent to which the driveway had affected her land. She now seeks an order awarding compensation for the encroachment.

[5] The history of the properties is relevant. The Piche family formerly owned both lots. They registered easement KW46899 (the “Easement”) on one property to allow for driveway access to the other.

[6] In May 2004, the petitioner, Ms. Therens, purchased one of the properties from the Piche family. She purchased the property that had the Easement registered on title. At the time of purchase, no driveway had been built on the Easement.

[7] In about the spring of 2005, the Piche family began construction of a driveway for the benefit of the property they still owned. At the time, the parties were on good terms. Ms. Therens assumed that the driveway was being constructed within the bounds of the Easement.

[8] By 2013, she became concerned about the impact of the driveway’s construction. Through counsel, she sent a letter requesting removal of the encroachments. The dispute ended the good relationship between the neighbours.

[9] The Piche family now wish to sell their property. Ms. Therens has brought this application to resolve the encroachment issue before the property is transferred to a third party.

[10] In her view, the driveway should have been built with a proper retaining wall. Without one, she has lost the benefit of a portion of her property.

[11] In 2023, she brought an earlier application before Mr. Justice G.P. Weatherill. He declared that parts of the driveway encroached on her land and ordered that she could return to court to seek further relief. This is that hearing.

### **Issue**

[12] The issue is what relief should be granted, having declared that there is an encroachment.

### **Burden of Proof**

[13] The petitioner bears the burden of proof. The determination must be based on admissible evidence. As at the earlier hearing, the parties were required to file affidavits and attach supporting exhibits. If the petitioner made out her case and the respondents failed to provide evidence in reply, she succeeds on those points.

### **Law**

[14] Section 36 of the *Property Law Act* provides:

#### **Encroachment on adjoining land**

**36** (1) For the purposes of this section, “owner” includes a person with an interest in, or right to possession of land.

(2) If, on the survey of land, it is found that a building on it encroaches on adjoining land, or a fence has been improperly located so as to enclose adjoining land, the Supreme Court may on application

(a) declare that the owner of the land has for the period the court determines and on making the compensation to the owner of the adjoining land that the court determines, an easement on the land encroached on or enclosed,

(b) vest title to the land encroached on or enclosed in the owner of the land encroaching or enclosing, on making the compensation that the court determines, or

- (c) order the owner to remove the encroachment or the fence so that it no longer encroaches on or encloses any part of the adjoining land.

[15] In *Taylor v. Hoskin*, 2006 BCCA 39 at para. 2, the Court of Appeal held that the section was enacted to provide a basis, on equitable grounds, for resolving encroachment disputes.

[16] In *Singer v. Willows*, 2022 BCSC 241 Mr. Justice G.P. Weatherill observed at para. 21 that s. 36 grants the court “broad discretion to do justice in the case of an encroachment.” At para. 28, he added that the task is to “look broadly at the equities and do justice between the parties.”

[17] In *Beaton v. Towle*, 2019 BCSC 287 at para. 38, the Court emphasized that compensation under s. 36 is not governed by expropriation principles. It is equitable relief, and the award must account for the overall impact on the parties, not simply the estimated value of the affected property.

### **Analysis**

[18] The petitioner retained Jonathan Sobottka, a qualified land appraiser, to assess the encroached area of 2,040 square feet. His report stated:

The encroached land is the result of the neighbouring property owner constructing a driveway access lane to their residence from Oyama Road that extended beyond their allotted easement access land. In addition to the encroachment, the aggregate materials sloped onto the subject property requiring cleanup and a retaining wall to be installed at the expense of the subject property owner. Prior to the encroachment, these lands were flat prime lands near the residence and buildings of the subject property.

[19] Mr. Sobottka conducted a paired sales analysis of comparable vacant land. He concluded that the encroached area had a current market value of \$45,500 as of March 10, 2025, which he rounded to \$46,000.

[20] In her affidavit, Ms. Therens deposes that she has been unable to access or use the north side of her property since the encroachment. She has been unable to

landscape, garden, or maintain the lawn. She paid full market value for the property but cannot use that portion of it.

[21] At para. 14 of her affidavit, she sets out her assessment of appropriate compensation.

[22] The respondents argue that many of her claimed amounts are speculative and subjective. They dispute her claim for the cost of a retaining wall, which she estimates at \$15,120, but provide no competing evidence. On the basis of the evidence before me, I cannot find that her estimate is unreasonable.

[23] The respondents also rely on a letter from the municipality suggesting a per-metre value. That letter is not supported by admissible expert evidence, and I give it no weight.

[24] In the absence of contrary expert opinion, I accept the evidence of Mr. Sobottka. His appraisal is objective, market-based, and unchallenged.

[25] I therefore find that the petitioner is entitled to compensation for the loss in value to her property caused by the encroachment.

### **Relief**

[26] In her third affidavit, filed June 13, 2025, Ms. Therens provides evidence of the various expenses and damages she has incurred because of the encroachment. She seeks compensation totaling \$93,139.55.

[27] Ms. Therens retained Vector Geomatics Land Surveying Ltd. to prepare a sketch plan in 2023, and a reference plan in 2024. This work was done in accordance with the order of Mr. Justice G.P. Weatherill made July 11, 2023. According to the invoices attached to her affidavit, the sketch plan cost \$2,132.05 and the reference plan cost an additional \$2,887.50. In addition to being required by court order, this work was reasonable and necessary in the circumstances. Ms. Therens is entitled to be compensated for the total amount of \$5,019.55, representing the total amount she paid to Vector Geomatics.

[28] To obtain an opinion with respect to the value of the part of her property that had been encroached upon, Ms. Therens required expert evidence. As mentioned above, she hired Mr. Sobottka to conduct a site review, gather the information necessary, and provide an appraisal report. According to the invoice attached as Exhibit “E” to her third affidavit, she was charged \$5,000. Again, that work was reasonable and necessary in the circumstances. She is entitled to be compensated for the expense she incurred, in the full amount of \$5,000.

[29] In October 2024, Ms. Therens hired RH Industries Ltd. to build a retaining wall. The invoice from RH Industries Ltd. for \$15,120, covering labour, materials, and equipment, appears reasonable and necessary. There is no evidence before me to raise any concern about the reasonableness of that invoice, or the need for the work to be done. Ms. Therens is entitled to compensation in that amount.

[30] Ms. Therens has instructed her counsel to prepare a draft easement, which would grant the Piche family and their agents the right to use the driveway. The draft easement was attached as Exhibit “B” to her third affidavit. She estimates that the legal expenses she must incur to file the new easement will amount to \$2,000. That is a reasonable and necessary expense. She is entitled to be compensated for the full amount of \$2,000.

[31] Next, Ms. Therens asks to be compensated for the value of the land lost to the encroachment. In Mr. Sobottka’s opinion, based on a paired sales analysis, the value of the encroached land is \$45,500. However, Mr. Sobottka also analyzed the value of the affected lands through the concept of injurious affection and the concept of disturbance damages. With respect to injurious affection, after considering the location of the encroached land, Mr. Sobottka opined that there was no reduction in the market value of the remaining lands belonging to Ms. Therens. With respect to disturbance damages, Mr. Sobottka noted that all entrances into Ms. Therens’ property appeared to be maintained with no disturbances to the existing use, and that therefore there were no other impacts to her property resulting from the encroachment.

[32] As Mr. Justice G.P. Weatherill noted in *Singer v. Willows*, s. 36 requires the court to look broadly at the equities. Applying that principle, I find the most equitable assessment of the property’s loss in value is \$15,000. Ms. Therens is entitled to compensation in that amount for the loss in value of her property.

[33] Finally, Ms. Therens claims an amount of \$20,000 for the loss of enjoyment of her property. Her uncontradicted evidence is that:

12. The encroachment has meant that I have not been able to access the north side of my property or use that area for any meaningful purpose. I have not been able to properly landscape, garden or even maintain my lawn. I have had to accept that I should not put any time or effort into improving that part of my property until such time as this matter is resolved. I paid fair market value to the Respondents for the entirety of my property and their actions have meant that I have not been able to enjoy a significant portion of it for the majority of my ownership.

[34] By building the driveway in the fashion that they did, the Piche family encroached on Ms. Therens’ property in an obvious and easily rectifiable fashion. The remedy at this point is to order that they have an easement on the land encroached, but only upon paying compensation to Ms. Therens. That compensation should include an amount to represent what she has lost. Again, this is not a precise science. However, one component of the compensation should address her loss of use and enjoyment of the land. I find that the amount of \$15,000 would be a reasonable and equitable amount. Ms. Therens will be compensated in that amount.

[35] The summary of the compensation ordered under s. 36(2)(a) of the *Property Law Act* is:

<b>Description</b>	<b>Amount</b>
Vector Geomatics sketch plan	\$2,132.05
Vector Geomatics reference plan	\$2,887.50
Jonathan Sobottka appraisal report	\$5,000.00
RH Industries Ltd. retaining wall	\$15,120.00

<b>Description</b>	<b>Amount</b>
Legal services to draft easement and filing expenses	\$2,000.00
Loss of property value resulting from encroachment	\$15,000.00
Loss of use and enjoyment resulting from encroachment	\$15,000.00
<b>Total</b>	<b>\$57,139.55</b>

**Conclusion**

[36] Pursuant to s. 36(2)(a) of the *Property Law Act* it is ordered that upon payment of compensation in the amount of \$57,139.55, the respondents shall have an easement over the subject property, in the form of the draft easement attached as Exhibit “B” to the affidavit of Shannon Marie Therens filed June 13, 2025.

[37] Ms. Therens is entitled to her costs on the petition.

“Hewson J.”